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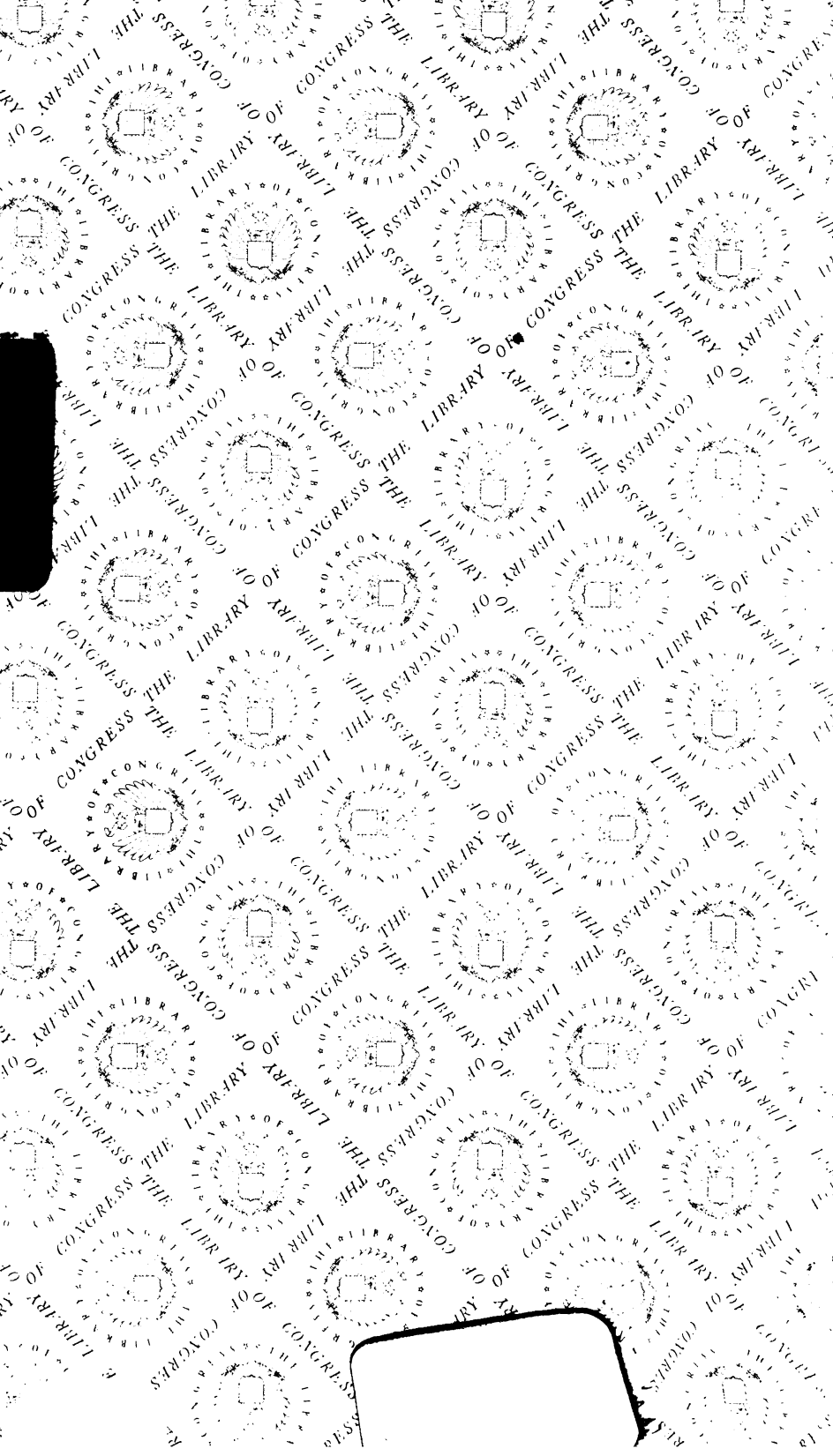
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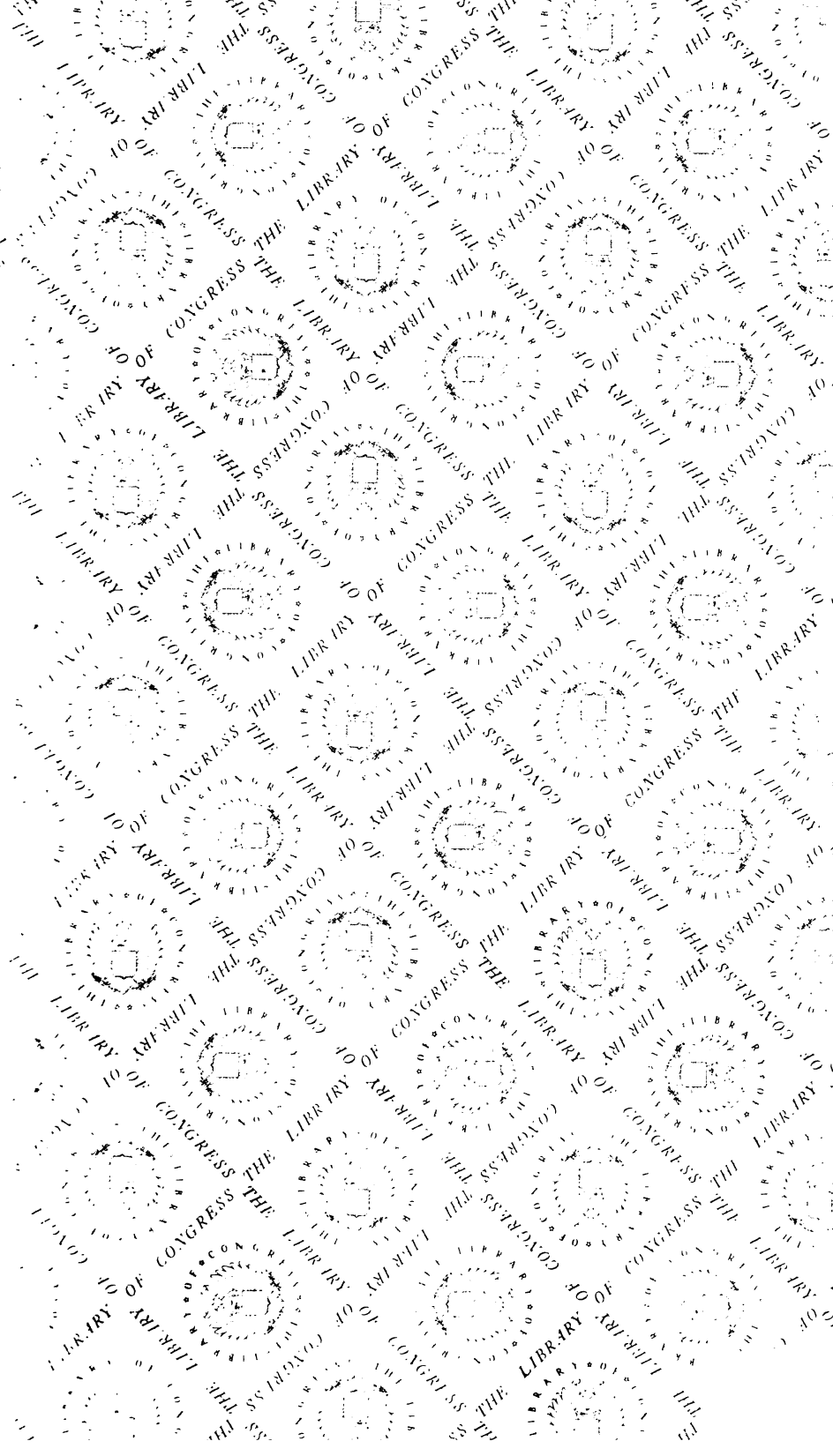
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HEARINGS

BEFORE THE COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE OF THE
U.S. HOUSE OF REPRESENTATIVES

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ON THE BILLS
RELATING TO

CAR SUPPLY AND TRAIN SERVICE

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CAR SUPPLY AND TRAIN SERVICE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Wednesday, March 4, 1908.

The committee met at 1.30 p. m., Hon. William P. Hepburn (chairman) in the chair.

STATEMENT OF MR. JAMES D. CONDON.

MR. CONDON. I come before you in behalf of the Chicago coal dealers and the Illinois and Wisconsin retail coal dealers. The intent of the bill which is known as the Culberson car and transportation service bill (H. R. 13841), is to require the railroads to furnish cars for through shipment to points of destination other than on their own lines; to require them to interchange cars with other railroads.

Just a word or two regarding the coal situation. Coal has been regarded by the railroads for a number of years as the one product, probably along with lumber, that has not any place. They start out with a train and they have some cars of coal, and as the train progresses they are able to take on a higher grade of commodity calling for a higher rate. They dump off the coal on the side track, and it has frequently occurred that a car has been as many as ten weeks coming a distance where the usual and average haul should not be greater than ten or twelve days, and that is due to the fact that they throw the coal off on the different sidings as they go along for the purpose of making more out of the power that they then have in hand. The result of it is that in Chicago the car-service association, for example, on the question of demurrage, permits the dealer forty-eight hours within which to unload a car.

The coal dealers of Illinois, Wisconsin, and Chicago believe in demurrage, but they insist that if the railroad companies are entitled to a prompt return of the cars the railroads should be required to furnish the cars promptly and furnish the coal promptly. For example, a dealer will have a certain number of demands for coal. He figures that it will take five cars a week or ten cars a week to handle his demand. He orders his coal with that end in view. His equipment is all along those lines. He has a certain number of men for the purpose of unloading cars. If the cars came in that way, two or three a day or every other day, as they are ordered, there never would be such a thing as demurrage, because the average coal man could unload all that he would ask for under those conditions; but they drop the coal off here and there and instead of turning in on a given day five cars and on another day five cars, they will sometimes unload on this man fifteen or twenty cars, and with his usual equipment he is not able to handle it, and the result of it is that he has to pay a demurrage.

Now, one of the purposes contemplated in this bill is that the railroad companies shall be required to move the cars with certain dispatch, the rule to be fixed by the Commerce Commission. It is not practicable, I presume, to include in the law the time within which or the distance which a car shall be moved in a given time, because of the varying physical conditions in our country.

Mr. BARTLETT. Is this the demurrage bill you are discussing?

Mr. CONDON. Demurrage is included in it.

Mr. BARTLETT. Are you going to discuss the question of reciprocal demurrage? In my city last year the freight was often in the yards for weeks where the material was absolutely necessary for a man to carry on a business—to build show windows in a store, for instance. That man waited weeks and weeks. That is only one instance. Finally he went down in the yard and they allowed him to unload the material from the car before it had been carried to the freight depot. Is that sort of condition of affairs to be affected by this bill?

Mr. CONDON. It is sought to effect this result, that the Interstate Commerce Commission shall prescribe certain rules indicating a reasonable time within which the car shall be delivered to the place of destination. In other words, if a man has his own private siding, that is the place of destination, because the car is billed to that siding. If this law was in force, such a thing would not be possible.

Mr. BARTLETT. This was after it reached its destination and the freight was in the yard; I do not mean at the depot, but in the yard, 1 mile one way and 1 mile another.

Mr. CONDON. The Interstate Commerce Commission could require the railroad company to place that car on the intrack within a given time after it received it from the point of origin?

Mr. BARTLETT. That is it.

Mr. CONDON. Now, of course the abuse is very great in the large cities, because the real advantage, or rather facility, with which a railroad can handle its business depends largely upon the terminals that that railroad has, and if the quantity of freight coming into a terminal is much greater than the facilities of that terminal will provide for, necessarily, this lumber in your instance, and coal and all other commodities, are out a mile or two at inconvenient places. Certain railroads, for example, have adopted a rule that they will not take a carload of coal for a point beyond Chicago. The Norfolk and Western, for example, from the Pocahontas field will ship coal to Chicago and will not give the operator coal cars for the purpose of carrying it beyond Chicago. The result of it is that the great number of people who are engaged in the coal trade beyond Chicago, in western Illinois and throughout Wisconsin, are not able to get the coal that their demands require.

One of the purposes of this bill is to require every railroad company to provide a car to be sent to its destinating point, and if a coal man in Wisconsin desired a car of coal the Norfolk and Western would not be permitted, for example, to say that that car shall not go beyond Chicago, but it must go to the place indicated by the operator. The car-shortage question would be greatly simplified if this bill was passed, at least in the coal business, and I do not know of any greater industry, or rather any industry that is more greatly affected by the car shortage than the coal industry, for the reason

that it usually takes place at a season of the year when people demand coal from the standpoint of comfort and health and all other good reasons. Now, if the railroads were required to move this freight, this coal, with a reasonable speed, the accumulation would not take place, and then when a storm came the trade generally and the comforts of the people would not be so much affected by it, because it would move along like all other freight. The car shortage would be greatly reduced, because the cars are absolutely put out of service so long as they are permitted to remain on the side track, and it does not make any difference whether they are empty or whether they are full. If you will observe, and you have no doubt observed as you have gone along to and from your homes, you have seen in small towns constantly cars of coal that were not intended for any person in that city, but were intended for some point beyond.

Mr. TOWNSEND. Are you speaking for gentlemen who have facilities for unloading coal and putting it in bins or for gentlemen who sell their coal right out of the cars?

Mr. CONDON. I am speaking for gentlemen who have the facilities throughout Illinois and Wisconsin. Outside of Chicago you will find very few men engaged in the coal business who do not have their own equipment for handling the cars of coal as they come in. In Chicago, of course, there are men who are brokers who have a car of coal consigned to them and they sell it to somebody else.

Mr. BARTLETT. It is the rule down my way that the consignee of the freight unloads the coal at his side track, and if he does not do it he has to pay so much a day for the car—a dollar a day?

Mr. CONDON. A dollar a day.

Mr. BARTLETT. These men I speak of had ordered it and had to wait six weeks before they could get their freight.

Mr. CONDON. The Interstate Commerce Commission can indicate where the freight shall be placed before the demurrage begins to run. That is absolutely essential.

Mr. BARTLETT. Yes.

Mr. CONDON. In Chicago they serve notice on the dealers that a car of coal has arrived at a certain point that is probably 10 or 15 miles from his yards, and they probably start freight demurrage right there.

Mr. BARTLETT. That is an instance I have right there.

Mr. CONDON. This will reduce the car shortage. I do not believe that with the railroad equipment as it stands to-day there would be any unusual shortage in coal cars if they were required to deliver them with reasonable dispatch.

Now, this other item enters into it: One of the greatest things that the coal men have to contend with is the shortage of the weight of the car. The car starts away from the mine loaded, and by the time this car of coal has been dropped off at ten or fifteen different side tracks—some people seem inclined to take coal wherever they can without paying for it—the result is that very frequently, almost in every instance where a car has been a number of weeks in transit, that car is usually short in weight. Now, of course there is a remedy at law, but the average coal man is in no position to sue that railroad company, for example, for 4 or 5 tons of coal losses, whereas if this thing was kept in motion the opportunity for stealing that coal would be greatly reduced.

Mr. BARTLETT. I guess the experience men have had that sued railroads, for short weight or over charges, has been everywhere as it has with us, that you would rather abandon any effort to collect it.

Mr. CONDON. That has been the experience of some. In the first place, the cost of starting the suit and of employing counsel, and the delay of getting away from your business, all those things enter into it, so that it is absolutely impossible to do it.

Mr. BARTLETT. A man would have to engage in as much correspondence about a five-dollar overcharge now as he would for a million.

Mr. CONDON. Yes; in that demand for \$5 you will frequently find the files will run up to include fifty to a hundred different sheets of paper. Now, I think, it would largely reduce the chances for a coal famine. A coal famine usually occurs when some unusual weather conditions arise, and in a storm this coal is lying along at different places on the track, and the average coal man has not sufficient coal in his bins, in a case where for several days on account of weather conditions coal is not delivered, to provide the necessary amount required by the people generally, and if this was kept moving there would be less chance for a coal famine than under the present conditions.

Mr. Robinson is here with me, and in view of the fact that the committee are not able to give us more than a half hour, for which we are very thankful indeed, I would like him to address you now. He is a practical coal man and he can give you some other illustrations and some instances where the coal trade suffers.

The coal trade demands for the proper conduct of this business these things: First, that a car shall be sent to a point off of the originating road if the coal is demanded there; second, that it shall be moved speedily and reasonably in a prompt way; third, that the railroads shall not be permitted to bunch a great number of cars on a small dealer, sometimes twenty to twenty-five cars, when this man has ordered his cars in one and two car lots, and make this small dealer pay from \$20 a day down for demurrage. It is said that the coal dealers in Chicago are paying in excess of what they should pay, not alone to the railroads, but because of the selling of the coal and all the other things that are incident to this delay in the traffic they are actually out between \$10,000,000 and \$15,000,000 a year, actually out that sum of money. I have had coal men say that. I do not know how reliable it is, but that is what they estimate it at, and they do pay a great deal of demurrage that they should not be required to pay.

Mr. TOWNSEND. You are satisfied that the present law does not empower the Commission to route the coal through from initial point to point of termination?

Mr. CONDON. It does not. The railroads absolutely refuse in many cases to give an operator a car to be used for a certain point.

Mr. BARTLETT. On the line of the question of Mr. Townsend, our impression is that one of the sections of the bill we passed in 1906 provides that every railroad, every transportation company, should give to the shipper a through bill of lading, and they themselves should be responsible to the shipper for any damage that happens to the freight, and collect the damage from the line.

Mr. CONDON. It does not require them to furnish the cars that go through. That is the distinction.

Mr. BARTLETT. Ah!

Mr. CONDON. It does not require them to furnish the cars that go through, and the reason the railroads do not do it is because if they send a great number of cars off their road onto another railroad that road will appropriate the cars, absolutely steal the cars, and they would rather pay 50 cents a day to the railroad company for the use of that car than to give it back. Now, if there was an interchange of cars so that when the Norfolk and Western or any other eastern road was carrying coal to the west, the Hocking Valley, for instance, it could demand the prompt return of its cars, which is included in this bill, and demand a sufficient number of suitable cars, the necessity for such a rule on the part of the railroads would fall.

I thank you very much, gentlemen.

STATEMENT OF MR. MILTON E. ROBINSON.

Mr. ROBINSON. At the outset, Mr. Chairman and gentlemen, I wish to say that I absolutely maintain that if there was proper management on the part of the railroads in the way of interchanging cars with each other, there is plenty of car equipment in the country to carry on the business necessary. In the short space of time I have I will simply try to properly illustrate how this interchange of cars—thus assuring prompt movement and ability to ship our goods as we need them—will work out and save a great loss to the Chicago dealers, members of our association, whom I represent.

The CHAIRMAN. What association is that?

Mr. ROBINSON. The Chicago Coal Dealers' Association. I am the president of that association. The Chicago retail coal dealers have two fields from which they secure about 90 per cent of their supply. Those two fields are the anthracite fields and the district of smokeless fuel in West Virginia, smokeless fields of the Chesapeake and Ohio, and the Norfolk and Western; and in the Pennsylvania field the anthracite on the Lehigh Valley, the Delaware, Lackawanna and Western, and other roads. We go to the agent of the operating company for our smokeless coal. We have no power whatever at the mines. We do not see the railroad company or have anything to do with the contracting of those cars. We are simply the unloaders, the receivers of this freight. Consequently, we do not come in contact and we have simply to accept the statements made by the operating companies, who take our contracts and are supposed to ship our goods.

There is a change of price that takes place on the 1st of September to the Chicago retail dealer. That applies all over the country, but I am simply representing the Chicago retail dealer. On the 1st of September that advance goes on. I will go to the operator and will contract, for instance, for 30,000 tons of coal. This contract will begin, possibly, on the 1st of May. It provides for equal monthly shipments of 3,000 tons per month, we will say, for ten months, covering the 30,000 tons. We go to work, on the other hand, and contract with the consumer to deliver prior to the 1st of September the amount of the storage that he can provide in his building, his house or factory, or any place where he uses and consumes the coal. We will get our shipments possibly in May and June, but in July the shipments

begin to fall off. The nearer we get up to the time when the rise in price commences under our contract, the less coal we have been getting, and I will say for my own company, individually, that there has not been a year for the past five or six years that we have not gone into the 1st of September from 4,500 to 5,000 tons short to fill our low-priced contracts, coal that we have contracted for to be delivered to us prior to the 1st of September at, say, 15 cents below the price we will have to pay after the 1st of September. Now, I will say right here that the operator in his contract specifies that if he is unable to get the equipment to ship that coal, they lose it, and have to buy other coal to take its place at the higher price. So that there has not been a year for the past four or five or six years that our company has not been obliged to go on the market and buy coal at the advance to fill these summer prices, and I will say right here, Mr. Mann, that four or five years I have been caught on your job that way.

Mr. BARTLETT. That same rule prevails in the city I live in in Georgia. The coal dealers will take your order during the summer, and I have known a number of them to lose on it. It is what they call their summer prices for coal and the railroads not having delivered to them, of course they have to get it somewhere else and lose on it. That happens in my city as well as in the city of Chicago.

Mr. ROBINSON. Now, of course, we have to assume that operators are telling us the truth when they say they can not get the equipment. We have no means of knowing. We have no direct representative in the field. Our association in Chicago is made up of 90 dealers, but there are about 1,500 dealers in the city of Chicago, with small interests, so that it will be impossible for each one of these interests to keep a man in the field to see that we get our deserts.

In every instance, with these dealers who are dealing in that commodity from the smokeless field, they go into the 1st of September with a great shortage and they have to deliver about that percentage, according to their business done, of coal that they lose on. The margin on that coal is very small, because it is a steam coal, and it comes more in the line of a cartage business than it does of coal business.

Now, coming to the anthracite field, I will show you that the same thing applies there. The anthracite field fix their prices—I assume you call it the anthracite trust—beginning the 1st of April, the low month. They make five advances of 10 cents each, one on May 1, one on June 1, one on July 1, and so on until on the 1st of September the maximum price is reached. We naturally want to have our customers taken care of in April and May, and we suffer the same loss on account of the car shortage in the anthracite field. So that with 90 per cent of the coal coming from these two fields, the class of dealers that I represent being identical with myself, the same facilities supplying the same class of business, suffer the same loss that my company does, and oftentimes on coal that we have sold in April at the April price, we have to fill orders out of coal that is shipped in June, July, and August, and we have a moral obligation with the consumer, and we have to deliver that coal at the price for which it is sold in April.

Mr. TOWNSEND. Is there any favoritism shown any of the dealers in Chicago, some getting advantages that others do not?

Mr. ROBINSON. I do not know; I could not state that that is so.

You see how we are affected. We are suffering a great loss, a loss that I believe would be rectified if we could compel the railroad companies to interchange cars, and have the railroads work under a law to compel them to move the cars a certain distance.

Mr. TOWNSEND. Suppose there was an effectual law in existence compelling the parties receiving cars to return them to another road. Would that cure the deficiency?

Mr. ROBINSON. The interchange of cars would cure that largely, so that it would not be necessary absolutely to return those same cars.

Mr. TOWNSEND. I was reversing it. Suppose it was obligatory to return the cars, that there was a rule established by the Commission to return the cars within a reasonable time to the owner?

Mr. ROBINSON. That is provided for in the bill.

Mr. CONDON. No; it is not covered by the bill.

Mr. COWAN. Yes, it is; the return of the cars and the—

Mr. TOWNSEND. But that would not be sufficient in itself.

Mr. ROBINSON. Take the railroad on which the freight originates. It brings the cars of coal to the first connecting line. They say to the connecting line, "We have ten cars of coal for you and we want 10 empties in return, or 10 loaded." So, you see, there will be a debit and credit kept at these junction points, so that when the railroad delivers to the connecting line 10 loaded cars they have a right to demand 10 cars in return, either loaded or empty. That will have a tendency to keep the cars distributed over the various lines—universally distributed.

Mr. BARTLETT. Suppose the road to which the 10 cars are delivered for transportation has not at that point this equipment?

Mr. ROBINSON. The bill specifies a reasonable time. It does not say that they have to be right there with them ready to turn back. The bill also provides that this connecting line can take those cars, press them forward to the destination, push them forward, and have them loaded, and return them; so that they can either return 10 cars of the same kind on the spot or rush the cars to the destination and unload them and bring them back to the point where it is required to deliver them.

Mr. BARTLETT. The requirement to exchange would give them a sort of spurring up to bring the cars back to comply with the law?

Mr. ROBINSON. Yes, sir.

Mr. ESCH. Does this penalty of 50 cents a day for each car retained have any tendency to prevent their retention and bring them back?

Mr. ROBINSON. I do not think it has done a thing.

Mr. ESCH. Would a rental of \$1 a day do it?

Mr. ROBINSON. No; I do not think so. The car charge has been reduced to 25 cents.

Mr. ESCH. It was reduced to 25 cents, and then it was put back to 50 cents.

Mr. ROBINSON. I have always thought that there should be a holding company and that there should not be a railroad company in the country that owned a car.

Mr. TOWNSEND. Have you any written statement you want to leave on that subject?

Mr. CONDON. We will submit that later through Mr. Mann.

(At this point the committee proceeded to other business.)

THURSDAY, *March 5, 1908.*

The committee met at 2 p. m., Hon. William P. Hepburn (chairman) in the chair.

STATEMENT OF MR. J. C. LINCOLN—Continued.

The CHAIRMAN. Proceed, Mr. Lincoln.

Mr. LINCOLN. The next subject is one that we will deal with very briefly, and that is House bill 4801, in regard to the amending of the fourth section by striking out the clause in regard to dissimilar circumstances of transportation. In other words, the effect of the proposed bill, and I notice more particularly in that connection Senate bill 125, which is slightly different in language, contemplates the absolute observance of the fourth section. We have given, as shippers engaged in interstate commerce, and our goods being sent all over the United States, a good deal of thought to that subject, and we have felt that if the rates were applied absolutely to intermediate points it would have the effect of advancing many of our rates. Lines would not meet short-line or water competition if their intermediate territory was involved, and therefore we would be deprived of that competition. Our country is very large, and there are many waterways that are available for transportation purposes, and it is our belief that there should be a waiver of an absolute application of the long and short haul clause, where dissimilar circumstances and conditions prevail, and that if the law were amended as passed it would have the effect of stiffening up the rates and would deprive us, as shippers, of competition that we now enjoy.

We know, every one of us that are shippers, that that section of the act as to dissimilar circumstances and conditions has been very much abused by the railroads; that where they have made terminal rates applying from a point of origin to a place of destination to meet water competition, and not applying those rates to intermediate points, they have carried rates to intermediate points that are unreasonable, unjust, and discriminating. It is, however, our judgment that the shipping public are in a measure responsible for that condition, because they have not complained of rates to the intermediate points. They have not undertaken to have the road justify its rates to local intermediate points compared with its through rate to the terminal point, and I am satisfied in my own mind, and decisions rendered by the Commission substantiate me in that, that they would not countenance the differences that exist to-day in the rate adjustment, and they would hold as contrary to law the local intermediate points as compared with through rates. That was treated upon pretty well in the lumber case that is before the Commission, involving the rates from southern points into certain sections of Kansas. I can not recall the name of the case now. I should have been prepared on that. It was treated of in the rates on sugar from New Orleans to points in Kansas, such as Humboldt, they holding that while the rate from New Orleans to Kansas City was fixed by water competition—water being a controlling factor—that to the intermediate points or to those points that were not all of them directly intermediate, you could not charge the full combination, but you could charge a figure

that was reasonable as compared with the through rate. The same thing, the same principle, underlying that is demonstrated in the order of the Interstate Commerce Commission in the rates on grain from Kansas points to Texas and the Gulf for export. They held that the rate from Kansas City to Texas and to the Gulf was controlled by dissimilar circumstances and conditions, and that it was not necessary to apply that rate to the intermediate points; but they held that the rates that were being maintained by the railroads from those intermediate points were unjust, unreasonable, and excessive, and they ordered a reduction.

If I was in my office and was referring to tariffs, I could refer to innumerable cases more along this line. Take the case of a rate from St. Louis. This merely illustrates, and I do not recall the exact figures, but as an illustration it applies pretty generally. A rate from St. Louis to Arkansas City on grain, $12\frac{1}{2}$ cents per 100 pounds. Distance about 360 miles. The rate from Arkansas City to a point out about 60 or 70 miles intermediate runs, 10 to 12 cents per 100 pounds. The through rate was made on that combination. If the rate was ever contested or a protest made, I do not believe that it would be sustained. Take a case that I have particularly in mind, which is the case of a rate on flour from St. Louis, Mo., to Alexandria, La. The rate was 20 cents per 100 pounds. The rate from Alexandria to a point 70 miles beyond was 20 cents per 100 pounds. Now, Alexandria rate is a terminal rate, made on account of water competition. I do not believe the other rate could be justified, but it has never been challenged, and it is my judgment that if you would take away the privilege of ignoring the long and short haul clause, you are either going to have your rates advanced from the Atlantic to the Pacific, or the roads will go out of business rather than apply a scale of rates like that to intermediate points.

MR. TOWNSEND. You believe the provision in the law which says that all rates shall be just and reasonable can be applied to individual cases, and not by comparison with others?

MR. LINCOLN. Yes; I believe the law as it stands to-day is all right, and that there are provisions in the law by which these other unjust rates can be readjusted, and that it is the fault of the shippers and the communities in not contesting those rates, rather than the fault of the company. I think I have said about all I care to on that subject.

MR. TOWNSEND. You are opposed to the bill?

MR. LINCOLN. Yes, sir; that is, H. R. 4801 and H. R. 3858. The same principles are involved in both of those. I have H. R. 3858 with these papers.

The next subject is the question of rate quotations. I said this morning that I did not find a bill on this subject. Some one referred me to H. R. 621, but I was told that that was a Senate bill.

MR. TOWNSEND. That is not before the committee.

MR. LINCOLN. It is not before the House, and I do not know whether it is proper to address you on that subject or not.

MR. TOWNSEND. I would be very glad to hear Mr. Lincoln on that subject, because that is a question that an amendment is proposed on.

MR. LINCOLN. It is a very important subject.

MR. TOWNSEND. Yes.

The CHAIRMAN. There is no objection to our discussing it, I think.

Mr. LINCOLN. The resolution to which we are speaking is as follows:

Whereas the posting of tariffs at railway stations is useless to the public and an enormous expense to the carriers without return to them for which the public must pay in the long run; and

Whereas the law places the burden of responsibility for incorrect rates upon the public, which is wholly wrong:

Resolved, That we memorialize the Interstate Commerce Commission to recommend to Congress to so amend the law that the officers of the carriers be obliged to quote rates in writing upon application and be responsible therefor and give rates upon bills of lading upon request and be responsible therefor: *Provided*, That if errors are made reparation shall be made only by claim through the Commission: *And provided further*, That in order to prevent collusion as to illegal practices, the carriers whose agent shall have quoted in writing or inserted in a bill of lading a rate less than the legal rate, reparation shall be for an amount equal to its entire earnings on the traffic carried at the lower rate.

The CHAIRMAN. What do you mean by that? Explain that last sentence.

Mr. LINCOLN. You refer to the word "reparation?"

The CHAIRMAN. Yes.

Mr. LINCOLN. I was just going to speak of the last sentence there a moment, because it has been modified slightly to agree with the absolute intention of the committee. The language reads that the reparation shall be for an amount equal to its entire earnings on the traffic carried at the lower rate. The inference seems to be there that the shipper shall get that reparation; something that was never contemplated. As to the posting of tariffs, we found it was unnecessary, and it was of no value to the shippers to have all the tariffs of the railroads posted at each station on its lines; that such tariffs as apply to and from that station should be posted at the station. But the committee makes this recommendation. It was drawn up, as you might say, as a proposed bill. I did not know that there was a bill. I thought we might have some Congressman introduce a bill. This reads:

A BILL To amend section 8 of an act entitled, "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 of an act entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June 29, 1906, be, and the same is hereby, amended by adding the following to section 8:

"The officers or agents of the carriers be obliged to quote rates in writing upon application and be responsible therefor, and give rates upon bills of lading upon request and be responsible therefor: *Provided*, That if errors are made reparation shall be made only by claim, through the Interstate Commerce Commission: *And provided further*, That the carrier whose agent shall have quoted in writing or inserted in bill of lading a rate less than the legal rate, shall be fined an amount equal to its entire earnings on traffic carried at the lower rate."

The measure contemplates that the shipper, if he has incurred loss by reason of the erroneous quotation, can have reparation for the difference between the erroneous rate and the legal rate only through the Interstate Commerce Commission. That is one measure to avoid collusion between shippers and carriers by which a man might get a lower rate.

Mr. ESCH. Do you know whether that obtains at the present time?

Mr. LINCOLN. I would say it does not obtain; no, sir. The question of erroneous rates for purpose of collusion does not obtain now. Fifteen years ago sometimes we found a road was cutting rates, and they said their "mistake agent got busy" but they had discharged him. Those things have occurred in the past.

Mr. TOWNSEND. There is no complaint now?

Mr. LINCOLN. There is no complaint as to the rate-cutting process. There is a general complaint that the roads are quoting incorrect rates to the shipper.

Mr. TOWNSEND. I know there is. That is what I was going to say.

The CHAIRMAN. Quoting him a lower rate and charging a higher one?

Mr. LINCOLN. Charging him a higher rate and quoting him a lower one than named in the tariff, through error. I believe very few of them would make a lower quotation, to get the business, and then go back and say to the man "I made an error. The tariff is so much, and I can not give you any less than the tariff."

Now, as to the provision that the company shall be fined, the fine of course is to go to the Government; that is to avoid collusion and to see that they give better service in the quotation of rates. That is the proposition.

The CHAIRMAN. The fine would equal the earnings upon that shipment or upon all similar shipments?

Mr. LINCOLN. Upon that shipment.

Mr. STEVENS. Who would make that quotation, the station agent, or would it go to the freight headquarters?

Mr. LINCOLN. The station agent might make it. He usually obtains it from a tariff, or he obtains it from a general officer; but it must be in writing.

Mr. STEVENS. How many of these mistakes are made by the station agent?

Mr. LINCOLN. A great many of them.

Mr. STEVENS. Would not the effect be, then, that the company would say to the station agent, "You made that mistake, and we will deduct it from your pay," and discharge him?

Mr. LINCOLN. I do not believe that would be the result. If they find they have incompetent men quoting their rates and there is a repetition of those errors, they no doubt would discharge that man and get a competent man for it. A great deal of the erroneous quotation is due to incompetent men quoting. That is all there is to it.

Mr. STEVENS. My point is that if the company's agent made a mistake, they would compel him to make it good, and that the company would not suffer.

Mr. LINCOLN. The company will suffer the fine of its revenue on that business.

Mr. STEVENS. They would charge it to the man, as far as they could, would they not?

Mr. LINCOLN. Well, yes.

The CHAIRMAN. Is not that the way companies do in regard to those matters?

Mr. LINCOLN. I have never found that they tried to do that a great deal. If a man is incompetent, of course they would discharge him.

The CHAIRMAN. If it is an error it would be covered by the agent's bond, would it not?

Mr. LINCOLN. I could not say as to that. I presume the faithful performance of his duties would be covered by a bond; but we are asking here that the shipper be protected as against these erroneous quotations, many of which are occurring.

Mr. BARTLETT. They could make it cover it if the guaranty company consents to it, and the guaranty company will consent to it upon the payment of a little additional premium. They will make up almost any sort of a guaranty outside of that you can get out of the ordinary form of guaranty bond, and they put on a little extra charge for doing it.

Mr. STEVENS. I have known some very cruel instances under that situation; but what we want is to have a real remedy.

Mr. LINCOLN. We have suggested this proposition as a remedy—that is, that the roads must quote rates in writing upon application, and if there is complaint that the Interstate Commerce Commission shall pass upon them, and when the Interstate Commerce Commission passes upon them, that is to prevent collusions, I do not think any one would try to defraud or get a benefit when they knew that the Commission was going to scrutinize their books. The railroad company would be deprived of its entire earnings on that traffic, and they would derive no benefit from the collusion, and they would certainly use every effort to give us competent men for rate quotations to see that we did have the proper rates.

Mr. BARTLETT. Do you want to supersede the publication of rates by that sort of a provision.

Mr. LINCOLN. No, sir; I do not want to supersede the publication of rates; but the shipper has to depend upon the railroad for his information as to rates.

Mr. ESCH. You really would discontinue the publication of rates in depots?

Mr. LINCOLN. Oh, no; I think the requirement of the Commission would still continue as to the filing of the rates to and from that station in that station, because it is an essential part of the business of that station.

Mr. ESCH. But as a matter of fact they are but little consulted?

Mr. LINCOLN. Yes, they are but little consulted. The average man can not find his rate.

Mr. ESCH. He could not find his way through them?

Mr. LINCOLN. And get a rate; no, sir.

Mr. ESCH. Do you think this would have a tendency to increase the accuracy of the quotations by the agent?

Mr. LINCOLN. I want to say that the accuracy of tariffs is increasing every day. I think there will be a more marked improvement just as soon as the roads issue their large tariffs, which they have in preparation, in line with the Commission's rulings. The present new tariffs are very much clearer.

Mr. TOWNSEND. Is it possible for a small shipper at a small station who wants to ship over two or three roads to his final destination to find out from the tariffs in the station just exactly what the rate is?

Mr. LINCOLN. I think that the average shipper can not, from an examination of the tariffs, tell just what the rate is. I would not be positive of it that he could not tell. It is a good deal like the time

card in the station. Many look it over and see it, but about half the passengers can not read it; they do not understand it.

The CHAIRMAN. Take the case of a station—say the first station east of Kansas City. Now, with the tariffs that they have there at that station, could you, with your experience as a freight man, go to that station and find out the rate; suppose there are to be three transfers on this shipment? Take any road.

Mr. LINCOLN. I have had a great deal of experience with tariffs; I have prepared a great many of them; it has been my official duty, and I would say absolutely that I would be afraid to go into the local office or the commercial agent's office of any railroad and undertake to positively quote a rate from their records. I would not have hesitancy, possibly, in quoting rates from my own records in my own office, because I know all the tariffs on file in that office; but to go into a strange place and among a lot of strange tariffs, and not knowing definitely their method of filing those tariffs and how they keep their indexes and references, I would be afraid. I am speaking of the shipper now. I would, myself, be afraid of it.

The CHAIRMAN. Then what is the value of those filings in those offices?

Mr. LINCOLN. Well, my personal opinion is that the filings at the stations of tariffs outside of those rates applying to and from that station is unnecessary, and that is what confuses the shipper, is the mass of tariffs that are on file at the station in which he has no interest, because it does not cover business to and from that station. But the tariffs to and from a station are necessary to be on file at that station in order that the agent may assess proper charges. He must know what the rates are to and from his station in order to make his billing.

Mr. ESCH. Including through rates?

Mr. LINCOLN. To his station or through?

Mr. ESCH. To and from?

Mr. LINCOLN. I think he should know all the rates to and from his station; they should be filed there.

Mr. STEVENS. Is it possible to get men at small stations that can know that?

Mr. LINCOLN. It is difficult at many places to get competent men in small stations who can handle these tariff propositions.

Mr. STEVENS. Last fall, some time, a man in southern Iowa wanted to ship a carload of household goods to northern Minnesota. He went to the agent of the Burlington, somewhere in southern Iowa, and wanted a rate on household stuff. He got it to Minnesota transfer. When he came to load the stuff in he had some horses, and such things as that, and he asked if it would be all right to ship those, and the agent said "yes," and so he did, and he shipped everything in the world that he had. Upon arrival the agent there found that it was subject to a higher rate, and he assessed him that higher rate, and took every cent the poor devil had. The case was appealed to the Interstate Commerce Commission, and they gave him no relief. Now, that agent did not probably know anything about that. How are you going to get agents at these small stations that can quote these rates correctly?

Mr. LINCOLN. It would be a difficult thing to do. If the agent took all that he had away from him, by charging him too high, there should be a remedy for that.

Mr. TOWNSEND. Here is a man who wants to ship a carload of goods from Detroit down to Podunk, in Kentucky, a little place that nobody would ever expect to ship anything to, and nobody would have any tariff to; but suppose that a man wanted to ship a carload of stuff down there, how is he going to know from a published tariff what the freight rate is down there? They do not have every place in the United States connected with every other place shown on the tariff, do they?

Mr. LINCOLN. No, sir; they do not.

Mr. TOWNSEND. How is a man going to find from a published tariff what he will be charged?

Mr. LINCOLN. You mean the shipper?

Mr. TOWNSEND. Yes.

Mr. LINCOLN. He can not. That is the reason these big concerns employ expert traffic men.

Mr. STEVENS. Is there not some provision giving a certain time in which the quotation can be made from the freight officers of the company?

Mr. LINCOLN. That may be. The usual rule would be that an agent, if he did not have the information at his own station, would ask the general office by wire—and they use the wire very freely—what is the rate, and he has that authority in making his quotation. Now, if the application is made to the general officer, he ought to be able to answer it.

Mr. STEVENS. He would be responsible, of course?

Mr. LINCOLN. Yes, sir. I had a case called to my attention four weeks ago. Hunter Brothers, of St. Louis, a milling company, bought ten carloads of feed to be shipped from a point up in Illinois to Cincinnati, Ohio. Their office is in St. Louis, their business is in St. Louis, and their headquarters is there. They purchased this feed at this Illinois point. I do not recall the name of the station now, but the general office in St. Louis of the railroad over which that shipment was made quoted the rate as 10 cents a hundred. The shipment was billed at 10 cents a hundred, and it arrived at its destination and was sent up to 12 cents a hundred. Now, an officer of that company over which that shipment was made quoted that 10-cent rate, and that company makes contracts absolutely for the price of those goods delivered. Hunter Brothers tell me that they make their contracts absolutely on the 10-cent rate for the sale of their goods. I examined the tariff myself, and upon an examination of the tariff it developed that the rate—the proper rate—under the tariff was 12 cents. The attention of the officer of the railroad was called to his quotation of 10 cents, and he made a further examination of the tariff and found that it did not apply over his line, and that his quotation was an error, and that the rate should have been 12 cents. Now, to use a common expression, where is the shipper going to get off?

Mr. TOWNSEND. They made their sale on a margin so small that all profit was taken away by the mistake?

Mr. LINCOLN. Yes, sir.

Mr. TOWNSEND. That is done frequently.

Mr. LINCOLN. Now, that is not uncommon. We are not attempting to punish the railroads. We want them to give us better service. We believe that a measure of this kind will improve the service, and

that the erroneous quotations should not be protected except on presentation to the Interstate Commerce Commission, and then they ought to show damage; but it will be a move in the direction of giving us better service, and it will protect the shipper when he incurs a loss on account of an erroneous quotation, whereas he has no protection to-day. He can not have protection under the reparation clause of the tariff.

Mr. TOWNSEND. No.

Mr. LINCOLN. And there is no provision there, unless there was a civil action of damages. Some of the courts seem to be afraid to touch that.

There is one other question I would like to present in order to be right in your record. While we prepared ourselves to discuss it before the committee, I understand that it is not in the hands of the Committee on Interstate and Foreign Commerce. That question is with relation to agreements versus pools. There are certain features of the resolution that we would like to have considered by you gentlemen, as Members of Congress, even if it does not come before your committee, namely, as to the supervision; that if there is to be an amendment to the Sherman antitrust law, as to the supervision over these associations, there shall be some way through these associations by which the shippers can be kept informed and in touch with proposed legislation affecting rates and upon which we think they should be heard. We think that when railroads are making a readjustment of rates involving the business of shippers, those shippers ought to be heard upon those questions, to see whether it is right or wrong, and be able to discuss it with the railroads, and not have it to come to them as it does now in the shape of a tariff, causing so much friction.

Mr. TOWNSEND. Do not the railroads discuss these matters with shippers at all?

Mr. LINCOLN. No, sir; they do not. They may with a few, but they do not do it generally, and lots of times on some questions they do not discuss them at all, because they are afraid they might have some opposition to it. It is difficult to get information frequently.

If there is no objection, without taking up your time, I think of you can just have these resolutions appear in the record it will answer our purposes.

The CHAIRMAN. Very well.

The resolution referred to is as follows:

RAILWAY AGREEMENTS VERSUS POOLS.

Whereas under the Sherman Act railroad associations for the purpose of establishing and promulgating rates for the transportation of passengers and property are illegal, and section 5 of the interstate-commerce act prohibits any carrier from entering into any contract, agreement, or combination with other carriers for any purpose; and

Whereas the President of the United States in his message of January 31 to Congress recommends that the railroads be permitted to form traffic associations for the purpose of conferring about and agreeing upon rates, regulations, and practices affecting interstate business in which the members of the association are mutually interested; and

Whereas in the judgment of the National Industrial Traffic League such associations are necessary for the proper handling of affairs of the carriers: Therefore, be it

Resolved, That we indorse the views expressed by the President and that we recommend to the Congress of the United States that the Sherman Act be so amended as to permit the railroads to meet and confer upon all questions relating to traffic regulations and rates; provided—

First. That the rights of the carriers to take individual action be preserved and further provided that the carriers assent to the following conditions:

First. That the dockets of such meetings shall be recorded and shall be furnished to shippers upon request and that all such meetings shall be open to shippers and their representatives; and, furthermore, that each and every such association shall be under the supervision of the Interstate Commerce Commission, and that the Commission should have the right and power to review the proceedings of all such meetings, and that all articles of association or agreement under which such meetings are held shall be filed with the Commission, and that the Commission shall have the power to dissolve any association the acts of which shall be found by the Commission to be contrary to the law or public policy: Be it further

Resolved, That nothing in this preamble or these resolutions shall be interpreted to mean that the National Industrial Traffic League approves of pooling either tonnage or revenue of the carriers, to which pooling this league is unalterably opposed.

The next subject is one affecting House bills 16491 and 16741, which pertain to the through rates versus combination locals. The resolution on that reads as follows:

SUMS OF LOCALS VERSUS THROUGH RATES.

Whereas the act to regulate commerce provides that there can be but one legal through rate covering the movement of interstate traffic, which rate is that published in tariffs filed with the Commission; and

Whereas in many instances published through rates are greater than the sum of legally established local rates; and

Whereas the Commission has held that in such cases the higher published through rate will be regarded as prima facie unreasonable: Therefore, be it

Resolved, That it is the view of this league that no through interstate rate should exceed the lowest available combination of legally published local rates, and that Congress be asked to enact an amendment to the act to regulate commerce which shall provide that the Interstate Commerce Commission, either on its own motion or when its attention is called thereto by any party, shall require the carriers to reduce the published through rate to a figure not in excess of such combination of local rates and make same effective on not more than five days' notice.

Mr. STEVENS. That is the counterpart of the long and short haul clause, is it not?

Mr. LINCOLN. No, sir; the long and short haul relates to the higher rate to an intermediate point. This is where the through rate is higher than the short-haul one.

Mr. STEVENS. Should not that act be properly entitled "An act to repeal the interstate-commerce clause of the Constitution of the United States?"

Mr. LINCOLN. This one here?

Mr. STEVENS. Yes; that resolution you have just read.

Mr. LINCOLN. I do not think so. I think the combination of the locals versus a through rate is a very proper consideration. To-day the Supreme Court of the United States has held that where a shipment is forwarded to the junction point and reshipped the combination of locals can be applied.

Mr. ESCH. Is that the Texarkana case?

Mr. LINCOLN. Yes; that is the Texarkana case. We know that the very large shipping industries in this country have employed expert traffic men who are familiar with all these tariffs. By their knowl-

edge they are able to avail themselves of the lowest rates that exist and they can, by shipping to the junction point and reshipping, get the benefit of the lower combination, whereas the average shipper, who has not those facilities or means, is paying upon his traffic the through rate from the point of origin to the final destination, which is higher than that combination. The Interstate Commerce Commission have held that under the rulings of the court there can be only one legal rate, and that is the published joint through rate. They have, however, held that where that through rate is in excess of the combination of locals it is *prima facie* that the through rate is excessive and that it should not exceed, if it be as great as, the combination. They have also decided in the case of the Coffeyville Brick and Tile Company *v.* The Frisco, decision No. 1219, as follows:

This Commission can make no general rule that the through rate must not exceed the sum of the locals. Each case must be disposed of upon its own merits. (I. C. C. decision No. 1219.)

In Case 1087-D, Morgan *v.* Missouri, Kansas and Texas Railway, decided by the Interstate Commerce Commission December 6, the Commission says:

While a shipper may consign his shipment to a given point, pay charges on the same, assuming custody, and take possession of the property, and later re-ship to another point under rates lawfully applicable to such reshipment, neither the carrier nor an agent of the carrier may act as forwarding or reconsigning agent for the shipper in such manner as to evade or defeat the terms or intent or purpose of the law.

A specific through rate is the lawful rate for a through shipment, even if some combination of the rates may make lower, and carriers may not charge their higher through rate upon one shipment and the lower combination rate upon another shipment of the same kind between the same points at the same time.

Mr. TOWNSEND. Now, does not your same remedy that you propose in the long-and-short-haul proposition, namely, that if the rate is unreasonable you can make complaint against that, hold as to the through rate as compared with the combination of locals?

Mr. LINCOLN. You can make complaint, and they have reduced the rate.

Mr. TOWNSEND. Why would you object to the application of that rule in the application of the long-and-short-haul clause and enforce it in this?

Mr. LINCOLN. The application of the long-and-short-haul clause? You mean ignoring the combination?

Mr. TOWNSEND. No; in regard to the long-and-short-haul clause, if you will remember, you said you thought it was the fault of the shipper that the rate was unjust and unreasonable.

Mr. LINCOLN. Yes.

Mr. TOWNSEND. Should not the same rule be applied here where the through rate was unreasonable, and complaint being made, the Commission would hold under the rule as it has held a number of times, namely, that where there is a combination of two rates that are in themselves less than the through rate, that was *prima facie* evidence that the through rate was unreasonable?

Mr. LINCOLN. They have held that.

Mr. TOWNSEND. Does not that furnish relief to the shipper?

Mr. LINCOLN. Not unless the tariff is reduced. You mean if he can get relief by complaint?

Mr. TOWNSEND. Yes.

Mr. LINCOLN. They have in these cases; but our suggestion was a remedy by which relief could be secured quicker. The proposition was this, that a bill be presented, which we are suggesting as a new section. Section 6A, as proposed:

No through or joint interstate rate shall exceed the lowest available combination of legally published local rates. The Interstate Commerce Commission, either on its own motion or when its attention is called thereto by any party, shall have the power to require the carrier or carriers to reduce the published through or joint rate to a figure not in excess of such combination of legally published local rates, and make same effective on not more than five days' notice.

Mr. STEVENS. That is just what I came to in my first question. Would not the effect be this: Take a shipment from Chicago to New Orleans. The State of Illinois has a commission that has authority to fix rates, and it fixes a rate from Chicago to Cairo. In the meantime, you have a commission that would fix a rate in Tennessee, and another commission that would fix a rate in Louisiana, and would not the sum of those rates be the joint through rate; and if that be true, would not that take away from the courts of the United States practically, or from the Commission, the authority to fix rates over that interstate route?

Mr. LINCOLN. Made up of State rates?

Mr. STEVENS. Yes; made up of State rates.

Mr. LINCOLN. I understand the point, because it has been raised quite often.

Mr. STEVENS. That would be the effect?

Mr. LINCOLN. It would, if the States undertook to regulate the rates in that way.

Mr. STEVENS. Are they not doing it? Have they not done it? Are not those very States doing it?

Mr. LINCOLN. Some of the States have established rates that did reduce interstate rates.

Mr. STEVENS. Do you think it is wise for the Congress to abdicate its authority and let States fix rates for interstate traffic?

Mr. LINCOLN. I have peculiar views on that subject, and I think perhaps State commissions do go too far at times in their efforts to affect interstate rates. If there is a legal rate and not a contested rate, not one that is held up in the courts, but a legal rate which the shipper can avail himself of, I think that all the shippers should be permitted to avail themselves of that combination.

Mr. STEVENS. They can do it now. But you think it is better that the States should make the rates of this country rather than that the Interstate Commerce Commission should do it?

Mr. LINCOLN. No, sir.

Mr. STEVENS. Well, one or the other must do it.

Mr. LINCOLN. That is one of the features to be considered. I appreciate that.

Mr. STEVENS. I just wanted the proposition made clear so that we would understand it.

Mr. LINCOLN. I am very glad to have it, because this is one of the questions we have always brought out by discussion, because it might be possible for some State to regulate interstate rates by reduction in its State rate.

Mr. STEVENS. Or a combination of States to regulate rates in the United States?

Mr. LINCOLN. Or a combination of States might do it. To-day every railroad man knows that these through rates are being made with respect to such combinations. I would like for Mr. Boswell to relieve me here for a moment.

STATEMENT OF MR. LEWIS B. BOSWELL, COMMISSIONER, QUINCY FREIGHT BUREAU, QUINCY, ILL.

Mr. BOSWELL. Mr. Chairman, I shall not undertake to discuss this question, or any of the questions that have been before the committee, from a technical standpoint in the same manner in which Mr. Lincoln has done, from the fact that he is the embodiment here of both the experience of a railroad man and of the representatives of shippers. He stands practically as a Chevalier Bayard among all the traffic men. He is careful in his opinions, conservative, in order that there may not be misapprehension; and I feel that it is a matter of considerable importance, possibly, to be able to have the expression before the committees of Congress of such men representing the traffic department, and particularly in behalf of the shipper's side of the case. Some way or somehow there is a feeling extant that in the conferences before the committees of Congress the shippers have never rallied to their own support, or in behalf of their own interests, in any measure to equal that of the carriers. Consequently, in the discussion of many questions, you have been unable to gather in the light of experience from those who represent the shipper's side of the case. I take, therefore, that the expressions of such a man may enable you to see things as they are seen by the shippers, and when we appear before you as representatives of the shippers in a national or concrete form, we mean that we have no self-interests. The interests that we represent individually, in our individual capacity, are not represented here excepting as a question of the whole.

Now, in discussing these various matters and asking you to formulate laws, amendments, and changes, it is in the line of what we believe to be requisite in the movement of freight, interstate. We are not here to come back to the carriers in the line or under the guise, possibly, of being kickers, objectors, but to act in harmony, and in consequence realizing this fact, that the transportation interest is so closely allied with that of the commercial branch of commerce that they are inseparable, and the interest of one depends absolutely upon the interest of the other; and I contend that the greatest friend of the carrier to-day is the shipper. True, there are some shippers who are unreasonable. We do not wish to represent men of that character. We prefer to be conservative.

In discussing the particular proposition we have to-day, this question of the combination of the rates, I rather feel, in answer to the gentleman's point, that it were well to amend by striking out the commerce clause of the Constitution of the United States, that the practical effect of the combination of the lower rates would be to remove obstructions to the free course, the steady flow, of commerce, interstate. Many of the States to-day have established rates. You can not take that power away from them. If the combinations are to be made, they are already in existence. But under the laws as

passed by Congress the rate is the rate as made by the carrier, and we would in no wise take from him that right, because the carrier should always have the right of initiation in establishing the rate.

Mr. BARTLETT. You do not agree that the Commission should have the power to initiate rates?

Mr. BOSWELL. No, sir; I do not.

Mr. STEVENS. A great many of the States adopt that policy.

Mr. BOSWELL. My own does.

Mr. STEVENS. Mine does.

Mr. BOSWELL. I am speaking of the Interstate Commerce Commission.

Mr. STEVENS. Yes; but you want to wipe that out.

Mr. BOSWELL. The Interstate Commerce Commission?

Mr. STEVENS. Yes.

Mr. BOSWELL. No, sir. I do not believe that the Interstate Commerce Commission should have the right to initiate a rate, excepting upon appeal and hearing. I think it would be a dangerous precedent to give such a body—not impeaching it in any way—the right to initiate a rate, excepting upon appeal and hearing in the manner as provided by law.

Mr. ESCH. You mean complaint, and not appeal?

Mr. BOSWELL. Yes; complaint.

Mr. STEVENS. But you want the State commission to have that authority?

Mr. BOSWELL. The State commission to have that authority?

Mr. STEVENS. The State commission to have the authority.

Mr. BOSWELL. Yes; I want them to have the authority.

Mr. STEVENS. If the various State commissions have authority, and you join them together, what is the use of having an interstate commission?

Mr. BOSWELL. Because there must be interstate or through rates. The States have the power to-day. What is the proper effect of that power and the exercise and use of it? Through rates are made interstate, notwithstanding that there are through rates as between points wholly intrastate. Now, shippers ask simply that the lowest combination shall prevail. Why? Because it has always prevailed until the law as interpreted by the courts and the Commission says there can be but one through rate, and that is correct. If you have more than one through rate, then there is liable to be confusion or, worse still, favoritism, by whatever name you may characterize it.

Mr. KNOWLAND. Are there any cases where the through rate is lower than the State rate?

Mr. BOSWELL. That I can not answer of my own knowledge. There are cases where the through rate is higher than the combination.

Mr. KNOWLAND. I mean the combinations—where the through rate is lower than the combination of the State rates?

Mr. BOSWELL. I can not answer that.

Mr. LINCOLN. A great many of them.

Mr. BOSWELL. Now, we are obliged to face the law as it is before us, and the Commission in touching upon this has already set the pace. Mr. Townsend has referred previously to the views of the Commission as expressed in item 43 of circular 14-A, where they say:

Where a joint rate is in effect by a given route which is higher between any points than the sum of the locals between the same points by the same or an-

other route, and such joint rate has been in effect thirty days or longer, such higher point rate may until further notice from the Commission be changed by reducing the same to the sum of such locals, but not otherwise, upon posting one day in advance a tariff of such reduced rate and mailing a copy thereof to the Commission.

Tariffs or supplements issued hereunder must bear notation that they are effective on less than statutory notice by authority of this rule, and must refer to Interstate Commerce Commission numbers of tariffs which contain such locals.

Many informal complaints are received in connection with regularly established through rates which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a rate except after full hearing upon formal complaint. It is believed to be proper for the Commission to say that if called to formally pass upon a case of this nature it would be its policy to consider the through rate which is higher than the sum of the locals between the same points as *prima facie* unreasonable, and that the burden of proof would be upon the carrier to defend such higher through rate.

Now, that exists to-day; and who is to oblige the carrier, if you please, to put in that tariff making the lower combination? I can not see that the practical effect differentiates the case at all. The State rates are in existence and have been for years. The Commission recognizes that the lower combination should be made, but it has no power to make a rate, to take the initiative as it were, and there is **no law to compel the railroad to make that rate or observe the combination.**

MR. TOWNSEND. I do not understand that very clearly. I know of several instances that are squarely in point with what you are talking of. For instance, between my city, Jackson, and the city of Toledo, over the line in Ohio, there is a through rate made—I am talking about passenger cars now—there is a passenger fare that is higher than the sum of the locals. Those who are “on to the job,” as we say, buy their tickets at the State line, and then buy another ticket from there on into Toledo, thereby reducing the passenger fare. Now, supposing that I, as a purchaser of transportation on the railroad from Jackson to Toledo, should make complaint to the Commission that the published through rate is unreasonable; could I not get a determination of that fact, and under the rulings of the Commission would it not find that the reasonable rate was probably the same as the sum of the two locals?

MR. BOSWELL. I think, undoubtedly, yes.

MR. TOWNSEND. And therefore would I not, under present law, have power to correct the evil of which you complain?

MR. BOSWELL. Undoubtedly you would. It necessitates the filing of all these complaints and prosecuting the case through to its final determination on every one of these cases.

MR. BARTLETT. Is not that what we created the Commission for?

MR. BOSWELL. It has in the first instance the power to fix a rate, and if thought proper to fix a schedule of rates, if it had the time and information; and that gives over to the Commission the power to do that which Congress might do if it had time. I would like to invite Mr. Townsend's thought to this resolution, which is intended to carry the purpose we have in view into effect:

That no through interstate rate should exceed the lowest available combination of legally published local rates, and that Congress be asked to enact an amendment to the act to regulate commerce which shall provide that the Interstate Commerce Commission, either on its own motion or when its attention is called thereto by any party, shall require the carriers to reduce—

Now, they are not initiating—

shall require the carriers to reduce the published through rate to a figure not in excess of such combination of local rates and make same effective on not more than five days' notice.

Now, how is the Commission to know, unless there is a complaint? And how is the shipper to receive any benefit out of the combination, unless his attention is called to this lower combination?

MR. TOWNSEND. I see that. Your proposed amendment makes complaint necessary for this same rate, does it not?

MR. BOSWELL. Yes, sir.

MR. TOWNSEND. You can do that under existing law, can you not, without any amendment? If I complain of a rate down there, can I not get the same relief you hope to get, and by exactly the same process?

MR. BOSWELL. Can the Commission require the carrier to put that rate into effect?

MR. TOWNSEND. I think so. I have supposed it could.

MR. BOSWELL. Well, that is the crux of the question; without a hearing, I mean?

MR. TOWNSEND. You propose to have a hearing, do you not?

MR. BOSWELL. This provides "either on its own motion or when its attention is called thereto." Now, I say I differentiate this proposition from that of the right of initiative in making a rate. I say this is a corrective proposition, and not the broad basis of enabling any body of men in this country to establish the rates on the first principles.

MR. STEVENS. Why, sir, do you not know that quite a number of the States do that now, and that your proposition simply means that half a dozen States through their commissions initiating rates themselves would make all the rates of the United States? Is not that what your proposition would result in?

MR. BOSWELL. I do not think so.

MR. STEVENS. Well, it does.

MR. BOSWELL. I may be wrong.

MR. STEVENS. The States have commissions that make rates.

MR. BOSWELL. The States make rates to-day for the intrastate traffic.

MR. STEVENS. Yes, and combination bodies would make interstate rates, under your proposition, and neither the courts nor the Interstate Commerce Commission would have any voice to the contrary.

MR. BOSWELL. The Supreme Court has decided in the Texarkana case that these rates can be made by rebilling. The Interstate Commerce Commission, however, says that there is but one rate, and that is the through rate; and that is what we want to get, that the published through rate shall be based on the lowest combination without requiring rebilling. It can be obtained to-day by rebilling. You can not prevent the shipper from that. But that establishes favoritism.

MR. TOWNSEND. You would have to take up each particular case, would you not?

MR. BOSWELL. Oh, I think after a certain number of cases the carriers would be disposed to adopt the lowest combination, and because

in practice heretofore they have always been following through rates—

Mr. ADAMSON. After you drill them a while, after applying a few cases to them, you think they would get into the habit of doing right themselves?

Mr. BOSWELL. I think they would desire to.

Mr. STEVENS. They do it now in a great many instances, do they not?

Mr. BOSWELL. I beg your pardon.

Mr. STEVENS. That is done now by the carriers in a great many instances?

Mr. BOSWELL. Not unless it is absolutely necessary. The tendency is to the higher basis of rates rather than to the lower.

Mr. STEVENS. I have known of quite a number of instances where the carriers have reduced, because the State commissions have—

Mr. BOSWELL. They will if attention is called to it, and the circumstances justify them, because the railroads have, as a rule, been very reasonable in meeting those propositions. At least, I have found them so in practice, and I believe the natural tendency or disposition, if they found that that was the order of the day, would be to give the benefit of the lowest combinations on through routes, through shipments, and through rates. There are so many decisions on this proposition that all tend to the same end that probably that might be summed up in the case of the Hope Cotton Oil Company v. Texas and Pacific Railway Company (Interstate Commerce Commission Report No. 915, decided July 8, 1907), wherein a shipment was made from Shreveport, La., via Texarkana, to Hope, Ark. The rate was made up by the shipment from Shreveport to Texarkana on the local, and from Texarkana to Hope, Ark., on the next local, which combination of locals was lower than the through rate. The Gulf and Colorado refused to apply the sum of the locals, and charged the higher through rate. The commission, however, held "upon the record, that the present through rate of 30 cents is unreasonable, and that it should not exceed $17\frac{1}{2}$ cents, the sum of the locals, with a minimum carload weight of 30,000 pounds," and I believe reparation was granted. I would recommend this case for your consideration.

Mr. HUBBARD. In that case were the local rates fixed by state commissions or voluntarily adopted by the railroads?

Mr. LINCOLN. One of the rates was a voluntary rate, and one was a commission rate.

Mr. STEVENS. There are quite a number of States that have authorized commissions to make rates, and the commissions are making rates, are making a body of rates, a schedule, and those schedules are being assailed in the courts. Now, under that statute you advocate, just as soon as that schedule is put into effect, whether assailed or not, the through rate must follow on five days' notice, and if the court decides that the schedule is unconstitutional, as they sometimes do declare, then, without the commission or Congress having any authority, the rate changes again; or the railroad having authority, the rate changes again. In other words, the power to control interstate rates is taken away from the Federal authorities and is placed in the State authority to be decided one way or another.

Mr. BOSWELL. More so than to-day?

Mr. STEVENS. Yes, decidedly.

Mr. BOSWELL. The commission says in the case of *Morgan et al. v. The Missouri, Kansas and Texas Railway Company et al.* (1087, Interstate Commerce Commission) :

A specific through rate is the lawful rate for a through shipment, even though some combination of rates may make lower, and carrier may not charge the higher through rate upon one shipment and the lower combination rate upon another shipment of the same kind between the same points at the same time.

Now, gentlemen, this is a condition. We present it to you as a condition. It is not a theory; it is in practice. Which of the two horns of the dilemma shall we reach for? Is not the shipper entitled to the lowest combination as an inherent right? Has he not the right to buy in the lowest market; I mean, now, always at the rates legally filed with the Commission? Is not it a right of commerce that he shall have the benefit of the lowest market?

Mr. TOWNSEND. Is the State rate filed with the Commission?

Mr. BOSWELL. No, sir; the through rates are filed. Some State rates are, but the Commission does not regard a State rate.

Mr. TOWNSEND. No.

Mr. BOSWELL. As more than simply—

Mr. TOWNSEND. Then you mean by "legal rate" the sum of the local rates, the sum of the State rates?

Mr. BOSWELL. The tariffs filed with the Commission.

Mr. TOWNSEND. Well, that does not contain the local rates.

Mr. BOSWELL. That contains your through rates.

Mr. TOWNSEND. Yes; your one through rate.

Mr. BOSWELL. Yes.

Mr. TOWNSEND. It gives the Commission no information as to your State rate, does it?

Mr. BOSWELL. No; not necessarily.

Mr. TOWNSEND. Perhaps I am dull about that, but I can not understand how you can combine your two statements in your law. You say when the through rate is greater than a combination of the legal rates added together?

Mr. BOSWELL. Yes.

Mr. TOWNSEND. Now, the rates you refer to are State rates.

Mr. LINCOLN. Practically. All the State rates are filed with the Interstate Commerce Commission, with an Interstate Commerce Commission number, and are supposed to be applied on interstate shipments in the absence of a joint through tariff. I have cases in mind to which my attention has been called repeatedly where the rates on grain into St. Louis from points in Kansas and Nebraska exceeded the combination, although the Kansas and the Nebraska distance-tariff rates (and their terminal tariffs are adjusted to those distance tariffs) are filed with the Interstate Commerce Commission; notwithstanding those two local rates are on file in Washington, their through rate has been carried higher than that combination.

Mr. ADAMSON. The situation may be illustrated in just this way: You go out of Danville, Va., and, either on freight or passenger, you can go to the far side of Virginia at Danville at a certain rate which is established in that State, which is profitable to the railroad. You can do the same thing across in North Carolina, clear across to the far side of that State; but because the State is crossed by the unfor-

tunate shipper the Federal Government, it is proposed, shall help to rob him by raising the rate that is satisfactory to both of these States.

Mr. LINCOLN. This case I refer to went even further than that, because these two tariffs are tariffs recognized by the roads as applicable on interstate business, and yet their joint rate exceeds their combined local rates, which are their legal rates and are filed with the Commission. I have called attention to a great many of those adjustments, and I will say that the railroads have published the higher rates through error, and they have corrected some of these errors. Others they have not corrected.

Mr. BARTLETT. In this decision that has just been read, on the second proposition, the Commission did not hold that the combination of the two rates in the State was the standard by which it was to be fixed. On the contrary, they say:

While a rate fixed by a State statute or a State commission is naturally and properly entitled to respectful consideration, it has no greater sanctity, as applied to interstate traffic, than a rate established by a railroad company; and this Commission would not hesitate, upon proper evidence that a rate so established would be unjust either to a carrier or to a shipper, to refuse to accept it as a basis for fixing an interstate rate.

Mr. ADAMSON. That is right. The fact that the State has established it does not give it the sanctity, and yet the fact that it is a reasonable and satisfactory rate, as in those two States, may be put before the Commission and considered by them.

Mr. BARTLETT. In the consideration of this case the Commission held that in the absence of testimony impeaching the reasonableness of the two State rates they would simply indulge the presumption that the establishment of the rate of 30 cents was unreasonable, that that was an unreasonable rate, and also as compared with other rates on cotton in the territory.

Mr. STEVENS. Yes; but these gentlemen want to take away that power from the Commission.

Mr. BOSWELL. That does not establish either that the Commission would do it or that we wanted to do it.

Mr. HUBBARD. It makes a prima facie case; that is all.

Mr. BARTLETT. Yes.

Mr. ADAMSON. I think myself, if they can carry a man or a bale of cotton 300 miles at a profit, they ought not to be allowed to double it because they carry the man or the bale of cotton 6 miles further.

Mr. STEVENS. I do not think so. He can have his remedy, just as he has now.

Mr. ADAMSON. I am inclined to think he can now, if anybody just puts those facts before the Commission.

Mr. BOSWELL. I have made all the statement I care to on this subject, and I can only hope that the discussion of this subject may be extended, and considering simply that we have brought it before you asking your earnest consideration and wisest decision as to how best this very embarrassing but momentous question can be met and determined, contending that in equity, in right, in practice, under all laws governing commerce in the movement of freight from time immemorial, a man has a right to the lowest rate that he can obtain for the movement of his traffic. Long before railroads or before steam was known that right was possessed by the shipper. Now, if

the laws to-day are such as to take away that right, are they just and reasonable?

Mr. RICHARDSON. Before you take your seat I would like to ask you a question. I just came in a few moments ago, and I do not know whether you discussed the line I am going to ask you a question about. You know from observation that the evil so lustily complained of for years back was principally rebates—that that was what the people suffered from. That applied, of course, to through rates more than it did to local rates, as a general proposition. Now, according to your observations, what has been the effect of the Congressional legislation upon that subject of rebates?

Mr. BOSWELL. Most wholesome, sir.

Mr. RICHARDSON. Most wholesome. That was the chief evil that was complained of, discriminations and rebates, rebates and discriminations being almost synonymous terms. Now, you say that the legislation of Congress thus far has been of a most wholesome character. We know that in this room, in all the investigations we have made here for years back on the question of regulating railroads, it was a common thing with the presidents of the great through lines of the country for them to admit that they had been engaged in rebates, and for them to say that it was a matter of necessity, and they could not help it, and that they wanted the most stringent regulations passed on that subject, and that they wanted all railroads made to obey those regulations. Your observation is that that legislation had a good effect, and that that evil has to a great extent ceased?

Mr. BOSWELL. I think that the recent amendment to the interstate-commerce law has been of the greatest benefit to the railroads from a financial point of view and the greatest benefit to the American public from a moral one. I believe, sir, that it is one of those cases where it requires a strong hand to set a man right against himself, for I have no doubt but what there is a school or a class of shippers in existence to-day who would welcome very gladly the return of the rebate conditions.

Mr. RICHARDSON. Now, this is the point: Having by recent legislation accomplished that great benefit in so short a time, is it not good policy to allow the law to be enforced and to demonstrate where the weaknesses are and what the evils are; and having succeeded so admirably in stopping that chief of all evils, rebates, Congress had better go a little bit slowly?

Mr. BOSWELL. In our opening address this morning we advocated that very principle. We simply said that we asked the attention of the committee to these three or four requirements which we believed would be not in the interest of meeting the requirements of the shippers for whom we speak, but setting our faces most strenuously against this wholesale amendment on every little proposition that comes up. It is wrong in principle and would tend to put carriers in a position where they would not know, as has been commonly said, "where they are at." Now, the right of the carrier is just as valuable as the right of the shipper, and we are not going to contest that; but the right of the people as a whole is so deeply involved that it becomes a question of equity, possibly of right or wrong, justice or injustice; and we must set our faces against the thoughts of evil in the past conditions and look toward those conditions of the better

days to come. Having settled that question, rebates are a thing of the past, and what we want now to do is to establish a stable foundation for transportation. That is all the railroads have to sell, transportation, and they are entitled to sell it at the best price that is obtainable. This law wipes out competition, practically. The only thing that makes competition a real thing to-day is water transportation. That forces it, and as long as water transportation exists there will be a basis for competition. But how can the railroads compete, as the laws are to-day, in the measure that they competed before? Having wiped out rebates, having wiped out passes, and plugged up a thousand holes through which the finances of the roads were pouring out of their coffers, you have assisted them and done them a benefit, and finally you have done the American people a benefit by saying there is one rate, there is one rule, there is one principle, and that is honesty and justice and right. Now let us hold to that and not slice this bill to pieces, but simply give attention to those particular points that you consider.

Mr. RICHARDSON. It is to the credit of those railway men that were so frequently here before this committee that they frankly admitted that they had been engaged, as a mere matter of self-protection in the evil of rebating, and they wanted Congress to pass the most strenuous, drastic, and stringent law to prevent it from being carried on at all. We did that, and I think it has produced a good effect.

Mr. BOSWELL. I think it has produced a good effect.

Mr. RICHARDSON. As you described so forcibly.

Mr. BOSWELL. I think it has.

Mr. RICHARDSON. And that advice and counsel having accomplished so much, we should go advisedly and carefully and conservatively into any other amendments we may make.

Mr. BOSWELL. I am a conservative on all this proposition.

Mr. RICHARDSON. So am I.

Mr. HUBBARD. In case the legislation you propose is enacted, what power would remain in the tribunals of the United States to determine whether a through rate was reasonable or confiscatory, if it was greater than the sum of two legal rates?

Mr. BOSWELL. Just as it is to-day.

Mr. HUBBARD. If so, it would be so in spite of the language of this bill, would it not?

Mr. BOSWELL. Yes.

Mr. HUBBARD. Would it not be better that this law should recognize the existence of this power?

Mr. BOSWELL. I think you recognize it when you give the discretionary power to the Commission to pass upon these points that are brought before them. The appeal to the court is always open to the people.

Mr. HUBBARD. Perhaps I have not fully understood the provisions of the law in that respect, then. I may possibly have in mind the bill rather than the—

Mr. BOSWELL. I am speaking to this legislation here, with regard to the establishment of the lower combination of rates.

Mr. HUBBARD. Does that differ from the bill that is under consideration?

Mr. BOSWELL. Yes, sir; we have our own remedy that we apply to this. The gist of it is that Congress shall be asked to enact an amend-

ment to regulate commerce which shall provide that the Interstate Commerce Commission, either on its own motion or when its attention is called thereto by any party, shall require the carrier to reduce the published through rate to a figure not in excess of such combination of local rates and make same effective on not more than five days' notice.

Mr. HUBBARD. What discretion is reserved to the Commission in that language?

Mr. BOSWELL. The same as is given in the law as it stands. We do not offer this as being repugnant to any part of the act. We do not wish to do that. We simply offer it as being a measure of relief to shippers who are obliged at times to pay a higher rate when it should be put lower.

Mr. HUBBARD. Is it in conflict with the existing law, which would permit the Commission to act or not to act, under this express requirement that it should act?

Mr. BOSWELL. Requiring it to act, it seems to me, is placing it in a different position from that in which it would be if it were in the discretion of the Commission whether it would act or not act. We have not stated in this—

Mr. LINCOLN. The recommendation is different from the original resolution. The Commission should have the power.

Mr. BOSWELL. I was reading from the printed resolution. Then I should like to change the record so that it would read:

No through interstate rate should exceed the lowest available combination of legally published local rates. The Interstate Commerce Commission, either on its own motion or when its attention is called thereto by any party, shall have the power to require the carrier or carriers to reduce the published through or joint rate to a figure not in excess of the combination of legally published local rates and make same effective on not more than five days' notice.

This being an amendment to section 6 of the act, is simply enlarging upon the question of what is a through rate.

Mr. RICHARDSON. You claim, then, that the only difference is that on suggestion, or without suggestion from anybody, the Commission might make a ruling without waiting for a determination or any particular case?

Mr. BOSWELL. With regard to the specific case.

Mr. RICHARDSON. That would be the only difference between the authority you propose and the existing law?

Mr. BOSWELL. Practically so.

Mr. MANN. Does not your proposition first say that no through rate shall exceed the sum of the local rates?

Mr. BOSWELL. The sum of the local rates.

Mr. MANN. Then it would be incumbent on the Interstate Commerce Commissioner to require the railroads to change the rate?

Mr. BOSWELL. If the attention of the Commission is called to it.

Mr. MANN. It would not be a matter of discretion.

Mr. BOSWELL. The discretion is not, apparently, in this proposition. I do not know but what it is a good thing to make it discretionary. I should feel, under the conditions that have developed this afternoon, that it might be well to leave it to the discretion of the Commission, but not to the extent of depriving those who are engaged in commerce of the relief that would be afforded by such lower combinations.

Mr. MANN. They have declared in some cases, or at least one case, that if a through rate exceeded the sum of the local rates, it was still a reasonable rate.

Mr. BOSWELL. It would place the burden upon the carrier to defend such a condition.

Mr. MANN. Now, after hearing they determined that.

Mr. LINCOLN. If the through rate exceeds the combination?

Mr. MANN. Yes.

Mr. LINCOLN. I do not know of any such cases.

Mr. MANN. They have decided that.

Mr. TOWNSEND. What is that?

Mr. MANN. They have decided that a through rate exceeding the sum of the local rates was still a reasonable rate.

Mr. BOSWELL. Can you call to mind what case that was in?

Mr. MANN. My recollection is that it was a case referring to transportation to Florida.

Mr. LINCOLN. I think they ought to have a new trial.

Mr. MANN. They have declared that in relation to the rates to Florida, and I think they have recently declared it in another case. I do not remember what road it was on.

Mr. TOWNSEND. You believe, as a general proposition, that it was wise for Congress to empower the Commission with authority to fix a just and reasonable rate, do you not?

Mr. BOSWELL. Upon a hearing; yes, sir.

Mr. TOWNSEND. Yes. Now, can you conceive where, owing to local conditions in a State, there might, temporarily, at least, be a rate fixed in those States which was unjust and unreasonable, on account of the smallness of it?

Mr. BOSWELL. Of the smallness of it?

Mr. TOWNSEND. Yes.

Mr. BOSWELL. Possibly. That is going to the extreme.

Mr. TOWNSEND. They might go to the extreme.

Mr. BOSWELL. Yes.

Mr. TOWNSEND. Of course we all admit that in the end they can go to the extreme and be declared confiscatory and unconstitutional?

Mr. BOSWELL. Yes.

Mr. TOWNSEND. But now that is in force. Now, your proposed bill would say that under all circumstances, as you have framed it, the Commission must fix a through rate that should not exceed the sum of the locals. Therefore you would force the Commission to fix an unjust and unreasonable rate because it is too small.

Mr. ADAMSON. I do not think that is true, on your hypothesis that the sum of the local rates will only settle it temporarily.

Mr. TOWNSEND. What I am talking about, when I say temporarily, is that they have not been decided yet. I admit that a State, even, could not fix a rate that was below, that the court on hearing would not declare unconstitutional because it was confiscatory, but I can readily conceive where a State might enact a law that would be finally determined unconstitutional. Now, if in the meantime you call upon the Commission to act, it has no discretion in the matter but to fix that rate equal to the sum of the locals.

Mr. ADAMSON. In that case, when the rate was declared unconstitutional, then the Commission would be called upon again to change its decision.

Mr. TOWNSEND. The thing I am objecting to is this: I want the rules of justice and reasonableness to obtain and govern in all the acts of the Commission, and I contend that it has no constitutional authority to exercise the duty of rate making except upon the theory that Congress has said, and the law says, that the rates shall be just and reasonable, and delegated authority or the ministerial authority is conferred upon the Commission to see that rates are just and reasonable.

Mr. BOSWELL. You are perfectly right, sir; but the Commission has already met one part of the statement of the case, as I understand you. I think it covers it in the decision that they will consider a higher combination unreasonable, and proposes to change the law which places the burden of proof upon the shipper in all things, which is wrong. They propose to change the law by this administrative ruling, and to say that the burden of proof shall be upon the carrier to defend such higher through rate. That is their own decision, and we know that the Commission must have felt very keenly the situation, or else they would not have made this ruling.

Mr. ADAMSON. That is not the case as Mr. Townsend puts it. In that case they are talking about local rates, which are undisputed and fixed.

Mr. TOWNSEND. I see the force of your argument, and I see where, if we could maintain the principle that carries in the bill, in the law, and still confer this authority upon the Commission, it might be a good thing; but I can not see for the life of me how you can do that and still maintain the principle upon which they make rates.

Mr. BOSWELL. Mr. Townsend, I am speaking now individually. If the concurrence in this proposition to grant the combination of the lowest rate tends to enlarge upon the powers of a commission, or the Commission, to the extent that they shall have the undisputed or unquestioned right of initiating any or every rate in this country, I say it would be a danger and a menace to pass such a bill.

Mr. TOWNSEND. I do not like to get into an argument and take the time of gentlemen that I want to hear, and I am not going to do it any further than this. Have you not only taken the discretion away from the Commission, but taken the power away from Congress when it has enacted this law, by saying that whatever rate two States fix as local rates shall be the joint rate?

Mr. BOSWELL. I do not view it in that way, and I do not know that the Commission would view it in that way, because they give no greater sanctity to a State rate than to any other.

Mr. ADAMSON. The difficulty between you and Mr. Townsend appears to be this: In your proposition you do not look to the process whereby the rate is established. You simply look at the established rate that the road publishes.

Mr. BOSWELL. Precisely. Brother Townsend emphasized the fact that they were made by the States. No matter how they were made, if they were not rightly made, he has himself indicated that they should be fought, and you are dealing with the established rates, no matter how they are made, that the roads publish and do business by.

Mr. BOSWELL. Legally filed; legal rates. I will ask to be excused, Mr. Chairman, unless there are some further questions. I am much obliged for your kind consideration.

STATEMENT OF MR. J. C. LINCOLN—Resumed.

MR. LINCOLN. Mr. Chairman, regarding, for a moment, House bill No. 7568, we submitted a proposed substitution. I think Mr. Townsend said there was not anything left of the bill afterwards. In connection with that, I would like to present for the consideration of the committee—as it might involve an increase in the cost of transportation to the shipper—this clause, after the words “effects an increase in its charge”——

MR. ESCH. You are referring now to this substitute and not to the bill.

MR. LINCOLN. Yes, sir; which it is suggested may be incorporated in the proposed bill. It reads:

Or causes such delay in the delivery of any commodity as shall materially increase the cost to the shipper.

I brought that up because by a change, not of the rate but of the regulation, there might be an increase of charge, and it might be worthy of the consideration of the committee. I believe that is all it is necessary to say on that, just to direct attention to it.

MR. ESCH. Is that in the bill introduced by Mr. Lovering, with reference to back-hauling?

MR. LINCOLN. Yes; this is what I am considering. Now, that is all, so far as the representatives of the National Industrial Traffic League are concerned. Those are all the points that our committee were instructed by the league to discuss with you. There is another bill to which my attention has been called upon which I wish to make a few remarks—that is, the Smith-Culberson bill, House bill 13841, in regard to the furnishing of cars—or, rather, I particularly desire to address myself to the question of permitting cars to go through where business is handled under a joint rate or through shipment, and the requiring that there shall be a balance by which the lines receiving cars from their connections shall return on demand sufficient cars to make good those cars that have been supplied by the connection in the conduct of its business. That question was gone into very fully, I think, by the Commission when it made its investigation as to car shortages in the winter of 1906 and 1907. There was a condition then which does not exist to-day, and on that point I refer more particularly, as deserving attention, to section 1 of the bill, with the elimination of lines 11 and 12, on page 1, and ending with the word “carrier,” on page 2. As amended, it requires the carriers to furnish transportation and to permit cars to run through, and the property to be handled with reasonable dispatch.

Section 2 I very much favor, which is a regulation in regard to the exchange of loaded and empty cars. Those two points, I feel, should receive consideration, and I think the shippers are entitled to some relief in that respect, so as to avoid the embargoes which create congestion, as was shown in that investigation. I do not know whether that report has been made a part of the records or not. If it has been made a part of the record——

MR. COWAN. The report has not been. Extracts from the report were quoted.

MR. LINCOLN. I expressed myself as a witness at St. Louis very fully on that point before the Commission. The other feature of the

bill I do not support—that is, the reciprocal demurrage. I think it is not time to reach the reciprocal demurrage proposition.

Mr. BARTLETT. You do not support that?

Mr. LINCOLN. No; I think if you require the road to furnish its cars within a reasonable time and permit those cars to run through, avoiding the embargoes and congestion at terminals forced by transfers, and if it is provided that the receiving or delivering carrier shall provide cars by returning empties or loaded cars to the roads from which it receives those cars, and that the cars be handled with reasonable dispatch, we will have no difficulty and the problem will take care of itself.

Mr. RICHARDSON. Have you seen the statement of the wonderful decrease in the business of the railroads in the last few months, so that they have not room to put their cars on the side tracks, and that they have to run them empty on the railroads?

Mr. LINCOLN. I want to say as to that, as I said before to the Commission at the time of its investigation, in my judgment, in the last two years there has not been a scarcity of cars. I want to say now that at this time there is an extreme surplus of cars by reason of the shortage of business. But what created that surplus, as compared with 1907 and up to October, was the fact that a car, instead of being one month, ten days, or two weeks on the road, is now on the road from three to ten days, and that car is making three trips, where at that time it was practically making one. If you get service out of the cars as you are getting it to-day, you certainly are going to increase the number of surplus cars, because it takes less cars to go around. We are getting better service. Our property is being handled with greater dispatch.

Mr. STEVENS. In what way is there a difference in the operation of the roads?

Mr. LINCOLN. They have not as much business to handle, for one thing.

Mr. STEVENS. Is there any difference in the operation of the trains, of their traffic?

Mr. LINCOLN. No; I think not, materially. I think in some cases there is. They are compelled to compete for the business now. They are all hungry for business. They are soliciting it all the time, and service counts for the securing of business, and they are giving the service to-day that they did not a year and a half to two years ago, because then they were not required to give the service so much, because they had all the business they could handle.

Mr. RICHARDSON. Are you contending that there is a shortage of cars and that the railroads ought to build more than they have?

Mr. LINCOLN. No, sir.

Mr. RICHARDSON. You think they have enough?

Mr. LINCOLN. I think there are ample cars in the country to do the business if they will handle them properly.

Mr. RICHARDSON. You admit, of course, that it is to the interest of the railroads for them to handle their cars?

Mr. LINCOLN. It is their argument that they would do that, but I can not admit it as in practice. I think that they are losing money by reason of their methods.

Mr. RICHARDSON. They are losing money just by reason of their own stupidity?

Mr. LINCOLN. Yes, sir. I took it in St. Louis and analyzed the business of that city that was switching between points in St. Louis, and the average time for switching there was a little over six days.

Mr. RICHARDSON. Then it is inefficiency?

Mr. LINCOLN. Inefficiency, I think; I have claimed that all along. I think it is inefficiency.

Mr. RICHARDSON. And that matter ought to be cured by law?

Mr. LINCOLN. There is no provision of law now requiring the roads to let the cars go through. The trouble at St. Louis was due to the fact that each road wanted to keep its cars, its equipment, at home, and they required transfers.

Mr. RICHARDSON. You are not complaining, then, that they have not enough cars on hand to meet the business necessities of the country, as you say they have? You are not complaining that they are making discriminations between shippers, giving one a preference over another?

Mr. LINCOLN. No; I am not complaining of that. I do not know of anything of that sort.

Mr. RICHARDSON. The trouble you complain of is that they do not use for the greatest efficiency the instrumentalities and the power they have in their hands; that they do not use what they have in the best way?

Mr. BOSWELL. The tonnage system.

Mr. LINCOLN. No; I think that had a great deal to do with it. I know it of personal knowledge. We are anticipating the movement of a crop—a grain movement. We know that it is going to come. There are a great many foreign cars that are made empty at a terminal like St. Louis, upon the tracks there. Those foreign cars there could be immediately taken out to the country where they are wanted and practically stored there to meet that demand, but they are depriving somebody of their equipment. You may say that we are robbing Paul to pay Peter, but the incentive was, with the foreign car, not to let it get away from them, and thereupon there were more shortages and complaints on that score.

Mr. RICHARDSON. We were inquiring of a very well-informed gentleman a few days ago, and he mentioned a certain road, which there is no use in my mentioning now, and he said that they would have cars shipped onto their line, the destination of which would be there, and that they would take those cars and send them off about other matters connected with their own road.

Mr. LINCOLN. They would.

Mr. RICHARDSON. And he said that was a great cause of complaint.

Mr. LINCOLN. Yes.

Mr. RICHARDSON. How would you remedy that?

Mr. LINCOLN. My idea of the remedy for that is that where a road is participating in joint traffic, through rates, through business, it should allow its cars to go through, and that the lines to which they made deliveries of those cars should return an equivalent. That should be done in switch service just as well as it should be in line service. I would say that the railroads themselves are recognizing the evils of robbery of cars and are making agreements at nearly every important terminal in regard to these matters. If a car that is switched onto another line to be unloaded to an industry on that

line is not returned, they pay a penalty of \$5 for not returning the car.

Mr. RICHARDSON. I was just going to ask you about that.

Mr. LINCOLN. All railroads are resorting to some corrective measures.

Mr. RICHARDSON. They keep up with every car, and if it is out over a certain length of time they know it?

Mr. LINCOLN. There have been some improvements in that respect.

Mr. RICHARDSON. They are remedying that evil, then, and they are paying a penalty of \$5 for each day that a car is kept out?

Mr. LINCOLN. No; that is just for the diversion. The road to which the car belongs, of course, gets its per diem for the car while it is away, but there is a fine of \$5 in addition to the per diem charge.

Mr. RICHARDSON. That will finally cure the evil?

Mr. LINCOLN. I think it is improving conditions somewhat, but I think we will have trouble just as soon as there is a lively movement of business in regard to embargoes of cars being loaded beyond the line of its own rails, unless that line has some protection in the way of having theirs delivered back to it empty or loaded in lieu of those cars delivered to the connection, and there is no regulation of that kind now.

Mr. ESCH. Then you would not feel it necessary to give the Commission power to regulate the minimum speed?

Mr. LINCOLN. I do not think that is a good thing, the speed proposition; no, sir. In the present law there is a proposition that you must handle property without unreasonable delays. Now, if you unreasonably delay a shipment, there ought to be some recourse in damages, and I presume there would be if you are damaged by reason of unreasonable delays.

Mr. ESCH. Do you think the other provision, as to the cars being exchanged, would remedy the evil?

Mr. LINCOLN. I have not gone into the bill sufficiently far to say how I think it ought to be, but I have just covered the ground in regard to the through cars and the interchange of cars, and what I have said is in line with what I said before the Commission; and also in regard to the switching. I believe that the best results, looking at it from the railroad standpoint, as I said at that time, would be ultimately accomplished by a car pool, so that the accumulation of empties at one end of the line through a car pool could be made useful by sending them somewhere else where they would be required, without sending them back empty.

Take the Northern Railroad. There is a movement of business through to the southeast and southeastern territory, and when it is delivering its cars to the southern connections they may not have any use for those cars and may not want them right back; but if they needed the cars, they ought to have the right to ask for the equivalents. There may be a surplus of empties South and a big demand for cars over Indiana and Ohio, and if a road does not want to use the cars, let the car pool take the surplus into the territory where they are needed instead of returning them to the originating line empty and taking it by a round-about method into the territory where wanted. That is a problem for the railroads in dealing with each other.

Mr. MANN. Is that provided for under the Smith bill?

Mr. LINCOLN. No, sir; only as to the actual interchange between each other. That bill provides if there is an actual interchange of cars between each other, the compensation, if it is not agreed to by the carriers, would be fixed by the commission for the use of cars.

Mr. MANN. Would the Smith bill require the same number of cars each way?

Mr. LINCOLN. It provides for interchange on demand.

Mr. COWAN. It requires the carriage through from the point of origin and gives a right to have as many cars returned on demand.

Mr. LINCOLN. The second section provides that "upon demand thereof it shall be the duty of every railroad to return the same."

Mr. MANN. When they had this so-called car shortage at St. Louis, did they refuse to carry any cars through? Was everything transhipped?

Mr. LINCOLN. No, sir; only certain lines placed embargoes, and usually those embargoes were placed in the country.

Mr. MANN. Do you mean the lines of railroad?

Mr. LINCOLN. Yes; the lines of railroad. I recall that the Chicago, Burlington and Quincy issued an embargo that its cars should not be loaded to go beyond St. Louis, and the Minneapolis and St. Louis issued an embargo that its cars should not be loaded to St. Louis. I know I had to negotiate with the terminal lines coming into St. Louis, and they made an agreement with me through their officers that if the Minneapolis and St. Louis would allow their cars to be brought into St. Louis they would not allow them to go through St. Louis. We were shut off from getting grain into our market because of that. I am with the Merchants' Exchange and connected with the grain business, and I speak from that standpoint, because I am very familiar with that. There were some cases where, cars coming into St. Louis, they would not allow those cars to be switched upon the rails of a connecting line; they had to be unloaded upon the tracks of the Terminal Railroad Association, and that Terminal Railroad Association had an agreement that all cars had to be returned back to the lines from which they received them.

Mr. MANN. Have you taken into consideration in connection with the Smith-Culberson bill that it might require a much larger return of empty cars?

Mr. LINCOLN. I have not felt that it would. It might be possible that it would. I have not felt that way.

Mr. MANN. I do not say that it would; it might.

Mr. LINCOLN. I do not think it would require a larger movement of empty cars under existing conditions.

Mr. ADAMSON. In order to avoid shipping them back empty you can let them load both ways.

Mr. LINCOLN. That is what causes the shortages of cars, waiting to accumulate loads so that they may have loads going back.

Mr. MANN. Then it would require a larger movement of empty cars if that is the cause of car shortages.

Mr. LINCOLN. I think it would require a larger movement of empty cars than they have had in the past, because they have been holding empty cars waiting to get loads in them; and that is what causes the shortage in other sections, because they would not return them empty.

Mr. MANN. If it should require a larger movement of empty cars, do you think it would be likely to result in a larger movement of loaded cars?

Mr. LINCOLN. Oh, well, the supply and demand are going to keep along about together. I do not think that at the end of a year it is going to make any greater movement of empty cars. You have to get them back sometime.

Mr. MANN. Yes; but I understood you to say that that was the cause of the trouble.

Mr. LINCOLN. It causes the shortages, because the cars are not being used to their full capacity.

Mr. MANN. If that were the case the railroads would have to deliver the empty cars, and would have to move the empty cars?

Mr. LINCOLN. Yes, sir. My idea was that there would be just as many loads moving, through a season, one way as the other, and you would avoid these seasons of congestion.

Mr. MANN. Is it not a fact in regard to railroads that they move the same number of loaded cars each way; that they have the same number of loaded cars going each way?

Mr. LINCOLN. No; it varies on the different roads and on different sections of the roads. On the Iron Mountain Road our loaded movement is about equal in each direction, whereas out on the Kansas lines our loaded movement was in the direction of the Missouri River, because it is from the producer, grain and live stock, whereas on our main line, between St. Louis and Kansas City, our movement of loads east and west bound is almost even again. But if you get out on the central branch, which is the division running from Atchison going out into the central country, again the movement was usually east bound from the country to St. Louis, with grain and live stock. In other words, there is not enough business that goes out into that territory, there being no big jobbing points or big cities to create a movement in the other direction. You take the business of St. Louis, and that passes through the city of St. Louis east and west bound, at some seasons west-bound loaded movement is heavier than the east-bound loaded; but take the seasons through and it almost averages. Of course grain will move at a certain time, or lumber may move, and there may be periods when it will be reversed and there will be a little larger movement of loads one way than the other; but where there are large industrial points located at both terminals the loaded movement will fairly well balance east and west bound. But where the lines reach out into the country, with no commercial centers—that is, terminating out in Kansas, as with a great many of these lines going out into the country—the loaded movement is in the direction of the markets.

Mr. MANN. Is not the demand for cars a good deal like the demand for money? You try to settle how to get the money when people want it, and we have not been able to agree on that. Is it not very similar, the movement of cars and the movement of money in the country?

Mr. LINCOLN. Well, I do not know that I could answer that. I am not very familiar with the money question. I do not want to express any view on that. If there is nothing further you wish from me, I thank you very much for the kindness of the committee.

STATEMENT OF MR. S. H. COWAN.

Mr. COWAN. Mr. Chairman, I believe I have the permission of your committee to use a little of your time to-day. I have not taken much time of the committee except individually, and there are a few things I should like to have put into the record, explanatory of the Culberson-Smith bill. I take it, knowing the committee and the committeemen as I do, that there is a desire, of course, for as correct information as they can get in regard to it.

Several questions were asked of me by the committee in the short time I had, I think about thirty-five minutes, before the committee on the bill, and some questions were asked by the Senate committee. It is difficult at the time when questions are asked, when there is a very short time to be heard and to answer them, and we have a number of things we would like to say, to answer such questions, and we avoid attempting on the spur of the moment to answer a good many questions. One question was asked by Mr. Hubbard—I think first asked by Mr. Stevens—as to what a railroad company would do to which were delivered a number of loaded cars of a peculiar make or sort used in a particular traffic, like beer refrigerators, and the like. It was contended at the time, and I believe I quote about correctly, by me in a very few words that under such circumstances the reasonable time mentioned in the bill could be applied, so that if the railroad delivered back the same cars in a reasonable time they would comply with the terms of the bill. In looking over the bill carefully I came to the conclusion that that was doubtful, and on that matter I have prepared a suggested proviso to the second section which meets that point. There were a good many questions, too, which were propounded by members of the committees here and in the Senate, apparently based upon the thought that a railroad company would have to use more cars if they interchanged than they would if they did not. I have taken pains to point out, I believe successfully, that a railroad company is bound under the present law to take and carry the freight. It must do that. It must furnish the transportation, as the word is defined in the present act. There is no limitation upon that obligation to furnish. Therefore, it would have to furnish enough cars to carry the freight at the junction point, and it would take just as many cars of the connecting line to there receive and follow the freight as if they exchanged the cars at that point. Of course I had more in mind live stock, because the live-stock people are the people that I represent, and I do not represent anybody else. In the interchange of interstate cars it is readily observable, to anybody who thinks, that it certainly would be a great deal better to simply exchange the loaded cars of live stock than to attempt to utilize the time and handle the stock, to attempt to unload and reload them, when it would require precisely the same time as if they exchanged the cars. It would be a great deal more burdensome on the railroad to be prepared to exchange the cars at that particular time and place, than it would to exchange them upon a reasonable time.

Now, I wish to file a little printed pamphlet, which I furnish to the committee, and I wish to have it in the record. It is not lengthy, and I think it is precisely to the point. This concerns what the law is now and the obligation of the railroads, and what the actual practical

effect would be in its working out under the provisions of this bill. The National Live Stock Association and the Cattle Raisers' Association of Texas, which associations I represent, have undertaken to get this law enacted. I have called the attention of shipping organizations throughout the country to this and have received a great many letters in indorsement of the proposition and the necessity of it generally. These letters are all short, and I desire to file one letter from each of probably ten or a dozen States which point out that fact. If the committee does not want the letters filed, I should like to make a list of the concerns which have indorsed the proposition, that the committee may know that there is a general indorsement of it. I believe that the shippers throughout the country are in favor of having those duties defined, so that the shipper may know what he could call upon the railroad to do.

MR. TOWNSEND. Under the provisions of the present law the Commission has power to fix a joint through rate where one does not exist, has it not?

MR. COWAN. Yes, sir; a through route and a through rate.

MR. TOWNSEND. Now, does it not have the power to compel a shipment from the through initial point to the terminating point?

MR. COWAN. Yes, sir.

MR. TOWNSEND. If there was a provision made whereby the cars of every railroad company were returned to it, or in its direction, within a short time, it would soon be discovered whether all the roads have full and sufficient equipment, would it not?

MR. COWAN. I should answer that in the affirmative; that it would have that tendency, undoubtedly. I think, however, that that fact is pretty well known, anyway, by each line, and that most lines handling live stock have not themselves enough cars to handle all their business in the season when the largest number of live stock are moved; and, furthermore, if I may explain a little further than that, the private car line companies, which own a great many stock cars—I think about 12,000 or 15,000—supply a great many cars which go out in the direction of their needs. So, in our line of business the requisite number of cars only exists by virtue of the fact that there are a large number of private car line cars which are subject to lease or which are used constantly at the markets at Chicago, where their headquarters are, and at St. Louis, Kansas City, Mo., and the other large stock markets. They draw on that supply to a large extent. Our western lines have increased their cars very much in the last few years, so that the increase in the cars from 1900 to 1906 was very much more than the increase in the live-stock tonnage. If I may call the attention of the committee to it, the record made before the Senate committee shows precisely what that was in each of the 20 western lines leading out of Chicago and of the great stock markets on the Missouri River and Mississippi River; 48 per cent of an increase in stock cars, 20 per cent of the tonnage in the aggregate of those roads. Not every railroad does increase its stock cars, and none of the short lines operating in the territory where live stock is so much produced even professes, at such times, to have sufficient equipment to handle its business unless it gets equipment from some other source; so that at this time, so far as our traffic is concerned, the return of the car belonging to the road would be far less than it would be in the ordinary box-car movement. I think that answers your question.

I want to speak of another point or two. There was a hearing before this committee with respect to the matter of speed limit. I believe the present chairman of the committee and Mr. Stevens, and probably Mr. Townsend and Mr. Esch, heard the statements of stockmen who came here about a year ago.

Mr. MANN. A year ago, yes

Mr. COWAN. I do not remember what members of the committee heard them, but they had a hearing before the committee respecting the extension of the thirty-six hour law. In view of the fact that there have been expressions to the effect that when we went to extend the time to thirty-six hours we found we had made a mistake, I wish to say to this committee that I think that with a full knowledge of all the conditions relating to the transportation of live stock in the West, the statements to the effect that that law has not been a benefit are very much overdrawn. These statements are made without thought, for in all these instances where the railroads are giving good service in the live-stock shipment, the thirty-six hour law has been a great advantage.

Mr. TOWNSEND. I do not think the statement was exactly that. The statement was that in this particular instance a great many roads had taken advantage of the thirty-six hours to delay the shipments of the cars.

Mr. RYAN. That was west of the Missouri River.

Mr. COWAN. Yes. I doubt whether that statement was as guardedly made as it should have been. The parties did not wish to misstate anything, but in the enthusiasm of our statements we often say things that are not quite well founded. The situation with respect to the performance of the service with a large body of business, on single-track roads, with the fact that the increase in sidings has only been about 4 per cent in seven years, whereas the traffic has increased on an average of 65 to 90 per cent, has rendered insufficient the sidings throughout the Western country; and with the large increase in traffic, with the congestion of terminals, with the difficulty that the railroads have had in securing exchange of equipment, the return of cars, it became extremely difficult to handle the traffic as rapidly as they otherwise wished, probably, to do. Another thing is that the feed yards in some localities have been leased out to private companies. Wherever that is the case you can hardly pass a train of live stock by there, because, as was testified in the hearing, hay is sold at \$35 or \$40 a ton, and the man having that yard desires to feed all the stock he can, and gets very busy getting them to stop there. Many of those difficulties were there, so that there is a measure of fact in the statement that this law had been taken advantage of to the disadvantage of the shippers.

Mr. TOWNSEND. Is the railroad in partnership with the feed men along the road?

Mr. COWAN. I would not want to make a statement to that effect; except I do say that the fact is there, that it is difficult to pass trains by those stations. On many railroads, and to a certain extent on all lines of railroad, the operation of the thirty-six hour law has been a great advantage. I know that the records of the Missouri, Kansas and Texas road will show many cases of carrying trains through to Kansas City without unloading to feed, within thirty-six hours; and wherever it carries a train through the benefit is there. I know that

on the Chicago, Milwaukee and St. Paul that has been done, from Cheyenne to the Missouri River, and I know there are many instances in which it has been of great benefit; and I do not want to be in the position, or to have the association which I represent to be in the position, of making the statement that what they asked for a year ago had proved not to be a benefit. It has been beneficial in a great many cases. It has not resulted in that benefit which it ought to have resulted in, and in a great many instances time has been taken advantage of in very slow movement, shockingly slow movement, not because of the thirty-six hour law, but simply because they were not moving the stuff; that was all there was to it.

The proposition was then made before this committee for a speed limit. The association which I represent has never believed, as I understand it, that an absolute speed limit, fixed in the law and applicable to the entire United States, would be possible of accomplishment. A speed limit of 16 miles an hour as has been proposed is certainly very desirable by all of the stockmen in the western country. They would like to have it. On main lines, on tracks where they are able to make the speed, they are certainly entitled to have it; but we could not claim that from Grand Junction, Colo., to Pueblo, across that great mountain there, they should attempt such a thing; it would be dangerous to life and the traffic. We have viewed the matter, we think, in a sensible way, and adopted a resolution in the Denver convention, in the live-stock meeting, which was acceptable to the principal cattle raisers there, from a dozen States, whereby they recommend a speed limit of 20 miles an hour between division points, and reasonable time for stoppage at division points, as applicable to stock trains, without mentioning how many cars; but with the proviso that the Interstate Commerce Commission be vested with the power to prescribe the speed limit, so as to make it applicable to the various circumstances and conditions of transportation. Now, this bill contains a provision that the Interstate Commerce Commission shall have the power to fix a minimum speed limit. It does not mention live stock, but it provides a minimum speed limit on any sort of freight where that may be found necessary to secure a reasonable transportation service. Many States have found that they had to do that to protect themselves. It may be as important in the case of coal—as these gentlemen said the other day—sometimes, as it is in regard to live stock. It may be as important in relation to fruits and vegetables as it is in regard to live stock. But at all events, while we desire the speed limit, and we do not oppose the bill that has been proposed here, yet it seems to us that there ought to be a proviso to it whereby the railroad would have the opportunity at least to apply to the Interstate Commerce Commission to be relieved where in reason and fairness it ought to be.

Again, we believe that the small shipper, of 5 cars, we will say, or more, should also have the protection of a minimum speed limit, if the shipper of more has that protection. It might not be the same speed; but at the same time, in all the vast corn-belt country, the shipments are less than 10 cars, and the bill before you has reference to 10 cars. Being less than 10 cars they naturally would complain if they did not have the opportunity to receive substantially the same protection as those who ship more. That is a matter which has to be

considered, and I suggested to Mr. Walker, the secretary of the Humane Society, that to his bill there should be a proviso giving the railroad companies the right to apply to the Commission for relief from the speed limit fixed where the circumstances in the case would seem to require it, and the Commission also should have the power to prescribe a speed limit for shipments of less than 10 cars; for, as I said to him, if the ground for your demand for the speed limit be humane reasons, it applies equally to the less than 10 cars as it does to the 10 cars.

Now, considering that our association represents the organizations of stock raisers of Kansas and Iowa, where so many thousands of animals are shipped in less than 10-car shipments, I thought it well to call your attention to the fact that the law should be made as nearly applicable to all shippers as possible, and yet have such provisions as would be just to the railroads under the circumstances and conditions where they could not probably make the speed.

I desire to file that resolution of the American Live Stock Association as expressing their judgment upon the subject.

(The resolution referred to is as follows:)

AMERICAN NATIONAL LIVE STOCK ASSOCIATION.

Committee resolution No. 8, regulating speed limit of live-stock trains, adopted at Denver, Colo., January 21 and 22, 1908.

Be it resolved, By the American National Live Stock Association in annual convention assembled in Denver, Colo., January 21 and 22, 1908, that the Congress of the United States be and the same is hereby memorialized to enact a law to provide for a minimum speed limit for the transportation of live stock, which minimum speed limit for stock trains shall not be less than 20 miles per hour from the place of loading to the first division point of the road, and between division points and the place of destination, with such exceptions as should be made over mountain divisions and under other exceptional cases, as to make the same reasonable, as circumstances may require; and

That the time limit for stoppage of live stock at division points does not exceed a reasonable time. That the law fix appropriate penalties against railroad companies for failing to observe such speed limit in the transportation of live stock and for failure to observe such rules as may be prescribed by the commission, subject to such exceptions as are fair and reasonable for accidents and causes beyond the reasonable foresight and control of such railroad companies;

Provided, That the burden shall be on the railroad company to show in all such cases the facts of such accident preventing the observance of said mentioned speed limit; and, be it further

Resolved, That the Interstate Commerce Commission be vested with the power to prescribe the speed limit, so as to make it applicable to the various circumstances and conditions of transportation.

With respect to the matter of the exchange of cars and facilities for shipment, and in order to disabuse your minds, if you might think differently, respecting this being merely a western proposition and coming from the range country or the stockmen of the West, I wish to call your attention to the enormous shipments of live stock out of the Chicago market to all of this eastern country. A couple of postals were furnished to me which contain exact statements as to the number of live stock which are sold and which are shipped out to so many destinations of the East that it would indicate to anyone that the people throughout this entire country are as much interested in having prompt transportation of live stock as they are in the West.

Competition in the great markets of the country can only exist where there is a freedom of movement that enables the people who desire to purchase on the hoof to do it. Let me just take your time for a moment to read from this:

Monday, February 10, 1908, the Chicago Union Stock Yards received 33,501 cattle, 1,303 calves, 87,716 hogs, 26,999 sheep, and 838 horses, or a total of 150,357 animals in 2,933 cars, breaking the previous record of hog receipts and total number of animals received.

Of the receipts, there were sold and shipped alive, mainly to eastern slaughtering points and for export, 10,063 cattle, 28 calves, 21,138 hogs, 6,469 sheep, and 109 horses, or a total of 37,807 animals in 787 cars, breaking all previous records of hog shipments, total number of carloads shipped, and total number of animals shipped.

The grand total handled by the railroads and the Union Stock Yard and Transit Company on that day was 188,164 animals and 3,720 cars, which is equal to a solid train over 28 miles long, or if ranged in single file would make a solid procession of animals over 200 miles long and require 10 days to pass a given point.

The other card contains a statement showing the shipment of 681 carloads of live stock to 195 different consignees at 150 different points in 9 different States in a single day. I mention that to show the importance to the entire live-stock producing interest of all the great corn belt of the country in having the facilities for the transportation on the hoof; and when they have that, that means the proposition of competition at the market at Chicago; and you will meet it at St. Louis, and you will meet it at Kansas City; and if the speed at which live stock is moved and the facilities for furnishing cars shall increase or return to that state of affairs which existed seven or eight years ago, you will find that the solution of the proposition of competition in the markets has been solved, so far as live-stock producers are concerned. The time has come when there are no rebates; the stock raisers can ship as cheap as anybody else, and that is what is bringing about this condition, so that the necessity of celerity of movement, prompt shipment of cars, and knowledge that a man can get his cars, and knowledge that he can get them delivered in time, will solve the entire problem of the competition of markets in the sale of live stock; and that is the only thing that will do it, to sell them for distribution through the country on the hoof. The importance of live-stock traffic is far greater than a man who has not carefully investigated thinks. I will ask to file those cards as a part of the record.

The matter referred to is here printed in the record, as follows:

COMPETITION AMONG BUYERS BREAKS CHICAGO RECORD.

Just think of it, outside buyers in a single day buy on the Chicago market and ship out 681 carloads of live stock to 195 different consignees at 150 different points in 9 different States.

As showing the increasing outside competition in buying and wide range of distribution of live stock sold on the Chicago market, the following reports of the past week's shipments are quoted:

Monday, out of 2,515 carloads received, outside buyers bought and shipped out 681 carloads of live stock to 195 different consignees at 150 different points in 9 different States. Fourteen consignees shipped 322 cars, while 181 consignees shipped 359 cars, and there were more than 100 different shipments of 1 carload each. Monday's cattle shipments totaled 10,475 head, breaking the record for one day. Of these only 383 head were stockers and feeders.

Wednesday, out of 1,744 cars received, 499 cars were sold and shipped alive to 198 different consignees at 167 different points in 10 different States.

Thursday 1,100 cars were received, while 420 cars were shipped to 132 different consignees at 78 different points in 16 different States.

During the week there were shipped out 2,306 carloads, or 113,910 head of live stock, of which 1,655 carloads, or 34,839 head (averaging 21 head per car), were cattle, constituting 48.6 per cent of the receipts.

This week, starting out with active markets, a strong demand from every source and prospects for good prices, notwithstanding Monday's run of 3,050 cars, or about 136,000 animals, bids fair to exceed the above records.

These figures prove that the outside demand and competition for beef cattle and all other live stock at Chicago is greater than ever.

GREATEST OF ALL MARKETS.

Chicago's enormous live-stock receipts and shipments create new records; run promptly absorbed.

Monday, February 10, 1908, the Chicago Union Stock Yards received 33,501 cattle, 1,303 calves, 87,716 hogs, 26,999 sheep, and 838 horses, or a total of 150,357 animals in 2,933 cars, breaking the previous record of hog receipts and total number of animals received.

Of the receipts there were sold and shipped alive mainly to eastern slaughtering points and for export 10,063 cattle, 28 calves, 21,138 hogs, 6,469 sheep, and 109 horses, or a total of 37,807 animals in 787 cars, breaking all previous records of hog shipments, total number of carloads shipped, and total number of animals shipped.

The grand total handled by the railroads and the Union Stock Yard and Transit Company on that day was 188,164 animals and 3,720 cars, which is equal to a solid train over 28 miles long, or if ranged in single file would make a solid procession of animals over 200 miles long and require ten days to pass a given point marching constantly at the rate of 20 miles per day. This is something never before equaled; moreover, all were quickly and easily handled.

Monday's enormous receipts were promptly absorbed at only a slight reduction from the prices of the previous week, practically all being sold on day of arrival. Packers got upward of 51,000 hogs, shippers bought close to 25,000, and the remainder were mixed hogs, mostly sold to speculators. Of the 11,000 left over, 4,000 were carried over by shippers and 7,000 by speculators, almost everything being sold.

No other live-stock market in the world could have withstood such an enormous run in proportion without a disastrous break in prices. Yet so great is the demand for meats and live stock of all kinds at Chicago that Tuesday, with full ordinary receipts, hogs sold 5 cents to 10 cents higher and cattle and sheep about steady, while Wednesday's markets show further advances of 5 cents to 10 cents in every department.

The above facts demonstrate the value to shippers of Chicago's splendid market facilities, her practically unlimited capacity for handling live stock, and the constant tremendous demand at Chicago for live stock of all kinds at the highest average prices.

Mr. ESCH. Would the distribution of the live stock through the country, and its slaughter near the great markets, tend to lessen the price to the consumer as against the system which requires transportation of the dressed meats in refrigerators?

Mr. COWAN. I am perfectly certain that it would do that. My study of the subject leads me to that conclusion, and I think that the leading stockmen of the country believe that the widest possible distribution of animals on the hoof will tend in the first place to a better price for the man who raises them, and to a better price for the man who consumes the beef; for if they were all killed in the great market centers we can readily see that those who killed them would have a dominion over the market, which, according to these statistics, it is

impossible for them to have to-day. I think that is fully recognized by gentlemen who have made a study of the subject.

Mr. MANN. Mr. Cowan, these cars of stock, of course, were all delivered to the Union Stock Yards and Transfer Company. I believe it is a different company now, but that was the old name.

Mr. COWAN. Yes, sir.

Mr. MANN. Of course, that company itself does not have stock cars?

Mr. COWAN. Oh, no; they just own the tracks and the switch engines; but the road engines bring the stock in.

Mr. MANN. I understand. Now, under this Smith-Culberson bill, as we call it over here, how would they handle the transfer of cars back?

Mr. COWAN. Just as it is handled to-day.

Mr. MANN. Here are 30,000 cars of stock that come in; and the stock yards company can not deliver back any more cars than it receives, unless you require it to own cars. They are required to receive the stock.

Mr. COWAN. But it is not a carrier, and is not a railroad company, and is not subject to the provisions of the act.

Mr. MANN. Oh, yes; it is a carrier.

Mr. COWAN. I beg your pardon; that has been decided just the other way.

Mr. MANN. Well.

Mr. COWAN. It was decided the other way. It may be a carrier as to some things.

Mr. MANN. Of course it is a carrier.

Mr. COWAN. The Commission and the Supreme Court of the United States, in the Terminal cases, have so decided.

Mr. MANN. I have had litigation with it, and I know what it is. It may not be an interstate carrier, but it is handling interstate commerce.

Mr. COWAN. It is a carrier of dead freight where it switches it, of course; but it is not subject to the provisions of this act, so the Commission hold.

Mr. MANN. It may not be subject to the provisions of this act as to that particular thing, because it is local business.

Mr. COWAN. Assume that it is, for the purpose of your question.

Mr. MANN. How are they going to deliver back the cars if they have not got them? You have studied this thing out, and I would like you to answer that.

Mr. COWAN. Yes; I will answer your question precisely; and this same thing applies at all of the large markets—the same principle.

Mr. MANN. Yes.

Mr. COWAN. The Burlington road will bring in 25 or 30 trains a day, and so will the Northwestern. They break up outside, at the switches, where they leave out the dead freight, and they carry this live stock in over the scales owned by that railroad company, where they are weighed, and then they pull on up to the yards with the road engine that brought the live stock in, or a switch engine belonging to that company, and the same crew carries the train on in, receiving time and a half for their time going in. They unload those cars; and proof before the Commission, in a record that covered a considerable period of time, showed that it takes about a half a

minute to the car. They pull the cars down and open the doors where there is a platform out in front, with the gates there—you know how they are fixed—and the live stock go into the chutes. That same train is pulled back by the same engine over the same track scales and the cars are weighed, so that the train never goes into the possession of the stock yards company at all; and that is the case at all of the large markets, so that as to that part of it there would be no difficulty. I believe that one who desires—I am not speaking of that to the committee, because of course I would not expect the railroad gentlemen who are opposed to the bill to do that—I believe that a railroad man who is thoroughly familiar with it, who desires to frame a law upon the subject, will find very little objection to the provisions of this bill with respect to the matter of furnishing and exchanging cars, and I can conceive of no objection that can be made to the second section of the bill. If the shipper, we may say, can get cars furnished from point of origin to point of destination, and furnished in a reasonable time, that is what he wants. The second section simply helps and enables the railroad to facilitate the exchange of cars, if they desire to do so. It is less optional with them. The Commission is authorized, it is true, to make rules and regulations with respect to it, and if the railroad company does not take advantage of its opportunities to get an exchange of cars, I assume that the railroad company would be liable to the shipper, the company having failed to use due diligence in that particular. That is the object of the bill, that it should do that. I do not want to take your time, I realize that it is late, and I would like to have these documents here filed.

Mr. ESCH. What is the difference between these two bills introduced by Mr. Smith, H. R. 17801 and H. R. 4007? By title they seem to be the same.

Mr. COWAN. I am not familiar with them. The first one that was introduced, Judge Culberson and I drew the bill, and there was a mistake in the penalty clause where it authorized the Government, should the Interstate Commerce Commission or the Attorney-General see fit to do so, to recover a forfeiture from the railroads for failing to observe the provisions of the law. In the original bill we put in the condition of "willful failure," but inasmuch as in the first section there is a proviso which exempts the railroad company, as I take it—it was so intended in all cases where by the use of reasonable foresight and diligence they could not comply with it—it was unnecessary to have put "willful" in the penalty clause at the conclusion of the bill, and we decided that was an error, and should be stricken out. In the first section that was practically the change that was made there, and I believe that there was also a provision that the provisions for enforcing the interstate commerce act should be applicable to such orders as the Commission might make under this act. I think that was added. That had been left out.

Mr. MANN. Have you examined the other bills?

Mr. COWAN. Not those on file; no. I did examine Mr. Townsend's bill for the return of cars.

Mr. MANN. There is one, No. 3012, introduced by Mr. Madden. Did you examine that?

Mr. COWAN. I examined that last session. He gave me that bill, and I had it before me, and I will say that the only reason I was induced to put in the subject of demurrage in this bill was that there

had been some bills introduced with Mr. Madden's for demurrage, and at that time there seemed to be a demand among all shippers for demurrage rules. Of course, that does not apply to live stock, and I care nothing about it, but it was introduced because there was a general demand, I think on the Commission and I think on this committee, for some sort of demurrage rules.

Mr. MANN. And that is for reciprocal demurrage, I think.

Mr. COWAN. Yes, reciprocal demurrage. You are right about that.

Mr. MANN. I suppose it also provided for a penalty for failure to deliver cars. That would apply to live stock.

Mr. COWAN. I believe there was a penalty of some sort, but I have forgotten at this time.

Mr. MANN. There is another bill, No. 3261, introduced by Mr. Denby. Have you seen that?

Mr. COWAN. I have not examined the bills which have been introduced at this session. I did have quite a number of bills before me that were introduced at the last session, but I do not think that any of them were comprehensive of the whole subject, and probably they were not intended to comprehend those subjects embraced in this bill. I know that some of them were not.

I wish to say to this committee that we have minimized our evidence on this subject. The records of the Interstate Commerce Commission are full of the most shocking cases of the handling of live stock, of poor service, of failure to furnish cars, and although there may be a surplus of cars in one district or upon one railroad, that does not help the shipper who makes an application for his cars and can not get them.

These cases are so frequent, of the same sort that are shown in the evidence which I filed but which I did not read, that I can safely say that it was almost the rule throughout a very large part of the western country, greater as the distance of the shipments was greater.

Mr. RYAN. When was that evidence taken by the Interstate Commerce Commission?

Mr. COWAN. Some of it was taken as late as April, I believe.

Mr. RYAN. April of last year?

Mr. COWAN. Yes, sir. Part of that is copied in your hearings and copied in the volumes of the Senate hearings which have been furnished to each member of this committee. There was evidence taken in January; possibly January 28 was the last date; but the conditions respecting the furnishing of cars for live stock have been as bad through the fall season of 1907 as they have ever been in the history of the country. If there is any doubt in the minds of the committee about the truth of what has been said, we can absolutely overwhelm the committee with the number of the losses which occur from that reason and which nobody gets.

The gentlemen from the Live Stock Association of Chicago have appointed a committee to come down here, and they wired me asking if they could be heard on the 6th, and I could not find out whether they would be or not. I hated to wire them to come here not knowing that they had also written to Mr. Mann, and then I had a letter before I got to wire saying they could not come until next week. The only thing I can do is to tell them, as I leave here on Saturday, that I will see them and give them some information as to when they can be

heard. This bill has been indorsed by the live-stock associations at every one of the markets, and it applies to all of the trans-Missouri country and to a large extent to all of the corn belt States.

These letters are indicative of what the shippers have said about it in the various States. I thank the committee for the consideration they have given the subject. I understand that Judge Smith wants to be heard when the evidence is in, on behalf of the bill.

At 4.50 o'clock p. m. the committee adjourned.

(The papers submitted by Mr. Cowan are as follows:)

CULBERSON-SMITH CAR AND TRANSPORTATION SERVICE BILL (SENATE NO. 3644; HOUSE NO. 13841)—SPECIAL EXPLANATIONS OF EXCHANGE OF CAR FEATURE BY S. H. COWAN.

Explanatory of the Culberson-Smith bill I wish to say:

The first section defines the duties of the carriers respecting supplying themselves with all needful facilities, including cars for transportation of freight from points of origin to destination and delivery to connecting carriers forming part of through routes where joint rates prevail and of connecting lines to receive and transport to destination or to deliver to connecting lines.

In one form or another, the duties specified are the duties now recognized, either by State laws or the common law, except the requirement to furnish cars for transportation on through routes where joint rates exist to points on other lines, and that generally prevails in the States as to intrastate business.

The first proviso in section 1 exempts the railroads from the obligation to furnish cars for through shipment of less than a carload; and in cases where it is necessary to unload en route, or in cases of accident or injury, or where freight is unloaded at the request of the shipper en route, or where by reason of accidental or unavoidable causes, or where it becomes necessary for any reason in order to forward freight to unload it; in all such cases other cars may be supplied. The second proviso exempts the railroads from any of the penalties of the act where the failure to comply with its terms or orders of the Commission thereunder arises from accidental or unavoidable causes which can not be provided against by the use of reasonable foresight and diligence, where reasonable diligence is used to supply facilities after the happening of such accidental or unavoidable causes. It will be readily seen, therefore, that inasmuch as the administration of the act is left to the Interstate Commerce Commission, and it is authorized to establish all needful rules and regulations pertaining to the matter of demanding, supplying, and exchanging cars, and rules and regulations relative to it, the law by the provisos is left so flexible that it can not work a hardship to any railroad which, with due diligence, endeavors to perform the service to which the public is entitled.

The penalties of the act, which are, first, the damages and attorneys' fees specified in section 4, and, second, the forfeiture which may be recovered by the United States, should the Commission or Attorney-General deem it necessary or proper to sue for it, are not applicable where the failure to perform the duties defined by the act is the result of causes which can not be provided against by the uses of reasonable foresight and diligence.

The necessity of declaring the duties of the railroads, as defined in the first section of the bill, to furnish cars for through shipments arises from the fact that no law of the United States requires furnishing cars for transportation on through routes and joint rates to go off the line of originating carrier, and hence the Commission could not make rules and regulations with respect to it without the duties being declared in the statute. Furthermore, no penalty or forfeiture, of course, could be enacted, except for the violation of duties which the statute imposes.

The second section creates a new duty, so far as interstate commerce is concerned, as between the railroads, in that it requires every railroad company to exchange cars with its connecting lines forming a part of the through route over which joint rates prevail, obligating each connecting line to furnish to its connecting line demanding the same, within reasonable time, as many suitable cars as it delivers to its connecting line, and also the right to demand the return of cars which belong to the railroad making the demand within a reasonable time; and authorizes the Commission to prescribe rules to regulate it.

A number of States have such laws, but Congress should regulate interstate traffic, which constitutes about two-thirds of the carload traffic.

The difficulty in getting cars, at least in the West, is not so much the insufficiency of the total number of cars to handle the business as the failure to get the frequent use and speed out of the cars, due largely to the refusal of railroads to exchange them, the disposition to retain cars of foreign lines, although not in use.

Confessedly idleness of cars, both loaded and empty, has been prevalent, for a car standing on sidings is idle whether empty or load.

While these difficulties have seemingly been more injurious in cases of live stock, they are not confined to that line of business.

Throughout the grain-growing States for the last two or three years it has been the constant practice to refuse to load grain in the cars of the originating line, if destined to points beyond its lines, and in such cases the shipper has to depend upon the ability of the originating line to beg, borrow, or steal somebody else's car in which to make the shipment, and, of course, with that sort of situation upon the originating lines, the delivering line pursues the same policy with respect to other sorts of freight, and when once foreign cars fall into their clutches proceed to appropriate them. Thus it was that all lines were complaining that they could not get their cars back. The foreign car was used in any sort of traffic, hence much more useful, and the customary charges paid for its use did not induce its return when once it got away from home. If each railroad must furnish as many suitable cars as it gets, whether its own or those in its possession, and return on demand the cars of other roads, the potential utility of cars would be enormously enhanced. Yet the total of cars on a given road could not be decreased, as each road could compel the return of its own cars and demand in addition as many cars as it might deliver, whether foreign cars or its own.

Section 2 therefore enables the railroads themselves to utilize to the best advantage the cars which may come to their possession, whether their own cars or not, and thus to enable the shipper to be promptly supplied with the largest possible supply of cars.

It must not be overlooked that one-third of the car mileage is empty movement, and an idle car is the same as no car for the time being.

The stagnation of business due to refusal to load cars for points off the company's road, and the slow movement and detention of freight and insufficient use of equipment due to the tonnage system, makes it imperative that this section be enacted; it must result greatly to the benefit of the railroads, and can not operate otherwise.

The Hepburn Act (sec. 1), after defining "Transportation" to "include all cars and other vehicles and all instrumentalities and facilities of shipment or carriage," and "all services," etc., declares that: "* * * it shall be the duty of every common carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor and to establish through routes and just and reasonable through rates therefor."

If for want of cars railroads may refuse to furnish the "transportation" as defined and required for the business which year after year is offered to it, which, of course, includes the increasing traffic arising from a growing country equally observable to every one doing business in a given locality, then indeed are they above the law and the public at their mercy. It was suggested at both House and Senate committee hearings that since the railroads wanted to make money they might be depended on to furnish the service. In answer let it be said that whatever may be the causes for it the service has been extremely and habitually bad, and is to-day in many localities. The shipper has the right to a reasonable service, and hence the law should define the right and enact remedies and fix penalties to enforce it. The carrier's obligation is to furnish the service by the means best suited to it, but to do it. The shipper's obligation is to pay for it. He doesn't attempt to run the railroad.

But, seeing that the failure to furnish cars is largely due to railroads refusing to load in their own cars freight for points off their own line, the refusal to exchange cars, and the delays in securing return of equipment, and not generally to shortage of cars if they were freely exchanged and returned, is the seat of the trouble, the second section of this bill is proposed as a practical solution of the matter; as beneficial to the roads as the shipping public. If it is defective let it be perfected. In view of the suggestion that in special cases like special equipment demanded in exchange, connecting lines might not be able to supply in reasonable time similar suitable cars, and it might be doubtful

whether the obligation to furnish cars in reasonable time could be complied with otherwise except by returning the same cars after carriage to destination and unloading, I suggest that the following words in form of a proviso might be appropriately inserted:

“Provided, That it shall be sufficient to return in reasonable time the same cars in cases of demand for exchange of special sorts of cars not necessary to the traffic of the road of whom cars are demanded in exchange, or in cases of unusual demands for cars, or where for causes which could not reasonably be provided against by reasonable foresight and diligence, any railroad company of whom such demand is made, as aforesaid, is unable to furnish others cars in exchange.”

It is of the utmost importance to bear in mind that all railroads are by the act to regulate commerce bound to furnish “transportation” (which is defined to mean cars and all service) on reasonable request, and to carry and deliver to connecting lines, and each connecting line is bound to do likewise. Thus each line is bound to furnish the cars, but is not apparently bound to let a car, whether its own or that of another road, go off its line. By refusing to load for points off its line the shipper is deprived of reasonable service, delayed and injured, and if the cars are furnished to carry to the junction point and freight is there transferred each must furnish sufficient cars there. Why not exchange? Each would still have as many cars. Under this law each can get as many as it gives up.

Another important fact is that it is impossible to handle the traffic and unload at junction points. Take coal, coke, stone, lime, cement, ores, lumber, heavy machinery, structural steel, oil tank cars, refrigerated freight, ice, grain in bulk where there is no elevator, all heavy low-grade articles, all freight which injures by delay and in transfer. Shall not the shipper have the right to have his freight loaded for shipment to destination, if there is a through route and through rate? Ought not the railroads be under as much obligation to load it in its own cars as in the cars of some other company, which confessedly it has no more right to control than its own? Ought not each road have the right to prompt return of its cars, and to get back as many cars as it delivers loaded? Without doubt neither shippers nor railroads have any way to compel the doing of justice in these particulars, therefore let the law define these rights and duties so that they can be enforced. Otherwise each railroad is left free to do what it pleases, the service is denied to the shipper. The bill leaves it to the Commission to make rules, as to which it will take advice of the roads so as to constantly insure return of the cars of each road under some progressive per diem charge.

In order that the execution of the law shall be made to operate reasonably; that it be flexible and adjustable to the various circumstances and conditions of different railroads and localities, and to different kinds and classes of freight and other varying factors, the Interstate Commerce Commission is authorized to make all needful rules and regulations.

In order that the law when it takes effect shall be operative without waiting for the Commission to act as to certain matters, it is specified in the law that until otherwise provided by the Commission, namely, demurrage is fixed at \$1 per day, the free time allowed shippers to unload without paying demurrage be not less than forty-eight hours; the reasonable time to order cars is three days for five cars or less, five days for five cars to ten cars, and eight days for over ten cars.

Serious damage, resulting in no benefit to anyone, has been caused by delays and slow time in shipping live stock and perishable freight, and, indeed, in almost every sort of freight, and the Commission is also authorized by the bill, if it deems it necessary to secure a reasonable service, to prescribe a minimum speed limit at which any kind of freight or cars shall be moved. Humanitarian reasons, aside from financial interest of shipper, should induce this enactment.

It has been very much demanded by shippers of live stock in every part of the United States, particularly where hauled for long distances, as is quite the rule, that a minimum speed limit should be fixed by law as a humane measure. The Agricultural Department, in its investigations of the service in cases of violation of the time limit for live stock remaining on cars without feed and water, has found that the average speed at which live stock is carried is less than ten miles per hour. When you enacted the law which extended the time from twenty-eight to thirty-six hours upon the insistence of the

stockmen and railroads in order to give them more humane treatment by transporting between principal markets and shipping points of feeding without unloading, the railroads profusely promised to utilize the time in reaching these feeding points and markets to save unloading, and this they said, and we said, could generally be accomplished, in the absence of accident, in thirty-six hours. Experience has proven beyond question that the time has, on many lines of railroads, and indeed, on most lines, though there are notable exceptions, been utilized in slow movement, without going further than they formerly did in the twenty-eight hours under the old law. This seems to make it imperative that the Commission be authorized to fix a minimum speed limit where the circumstances on investigation shall demand it to secure a reasonable transportation service, as well as the proper treatment of live stock.

It is the opinion of those whom I represent, at least for the most part—that is, stockmen—that owing to the varying conditions on different railroads and the different conditions of various railroads on the branch lines and on main lines, the level and mountainous districts, it would be impracticable for the law to fix a minimum speed limit to apply universally without making it so low that it would be of no benefit, indeed a detriment to the shipper in one locality and to the railroad in another. For example, with full stock train, or those run as stock trains for perishable freight, on main lines, railroads profess to make, and in many cases do make, 20 miles per hour and more, whereas on branch lines, mountain divisions, and with trains other than stock trains, although carrying some live stock, it would be too much of a burden to require the 20-mile an hour speed limit, so the law by its terms can not fix the proper minimum speed limit adjustable to the circumstances and conditions. Therefore it seems clear that the Commission should be given the authority in order that it could be made adjustable.

The rate is inseparable from the service and, as the Commission has power over the rate, it should in such cases be given power over the service to be utilized when and where it ought to be.

I beg to refer you to the printed hearings of the Senate Committee on Interstate Commerce of February 14 and House Committee on Interstate and Foreign Commerce of February 15.

Respectfully,

S. H. COWAN,
*Attorney for American National Live Stock Association
and The Cattle Raisers' Association of Texas.*

DES MOINES DAILY TRIBUNE,
Des Moines, Iowa, March 2, 1908.

Mr. S. H. COWAN,
Washington, D. C.

DEAR SIR: Your several communications regarding the Culberson-Smith car and transportation service bill have been referred to me by our commercial league as chairman of the railroad committee. I have taken the matter up with our Senators and Congressman and shall be glad to do anything we can to aid you in your notable work.

Yours, respectfully,

C. D. HELLEN.

KING HARDWARE COMPANY,
ATLANTA, GA., *January 9, 1908.*

CATTLE RAISERS' ASSOCIATION,
Fort Worth, Tex.

GENTLEMEN: Yours of January 2 to hand. I have been almost constantly absent from home for three months, and will probably be away again.

Have handed your letter to Mr. H. T. Moore, traffic manager of our Atlanta freight bureau. I am not now the president of that bureau. These movements will come better from the official organizations of the different cities, I think.

I am in hearty sympathy with the movement outlined, and will be glad to lend personal effort to it as far as possible.

Yours, truly, .

KING HARDWARE CO.,
Per W. E. NEWILL, Vice-President.

JANUARY 9, 1907.

H. E. CROWLEY, Esq., *Secretary, etc.,*
Fort Worth, Tex.

DEAR SIR: Your esteemed favor of 2d instant is at hand, and in answer thereto will say that I am heartily in favor of any bill that will tend to improve existing conditions along the lines you mention, and I will take occasion to write to all of the Senators and Members of Congress with whom I am acquainted urging them to support such a measure and giving reasons to the best of my ability why such should be enacted into law.

After all the fuss that the railroad companies made about the "rate bill," the only change we are able to perceive in this region is that by changing from a carload to a cents per 100 system they have increased the rate on cattle 10 per cent, while as to running time they have simply used the extension of the twenty-eight hour limit as an excuse to only go as far in thirty-six hours as they used to go in twenty-eight, which is what I predicted they would do.

Yours, truly,

R. F. BULLER.

NATIONAL STOCK YARDS, ILL.,
February 3, 1908.

Mr. S. H. COWAN,
Willard Hotel, Washington, D. C.

DEAR SIR: We are informed you will arrive at Washington this week and appear before the Committee on Interstate and Foreign Commerce to assist in securing the passage of a bill commonly called "transportation and car-service bill."

In this connection beg to call your attention to several specific cases that came to our observation the past year, involving delay on the part of railroad company in furnishing cars for the purpose of transporting live stock from points of origin to the markets. Also of bad handling and delay en route, involving, as is well known to every shipper of live stock, financial loss account of excessive shrinkage in weights and a damaged appearance of cattle on arrival at destination; the market hours being between 8 a. m. and 3 p. m. each day, stock arriving and not yarded before 3 p. m. is held over until next morning.

Complaints covering cases of this nature were numerous the past year, and it is our opinion something should be done in the way of legislation to correct the evil, and we trust your efforts will be successful in bringing relief to the shippers of live stock in securing the passage of the above bill during the present session of Congress.

We herewith inclose you on separate sheet list of specific cases showing delay in delivering cars and delay en route.

Yours, truly,

BRIGHT-COY COMMISSION CO.,
Per G. W. DOERR.

Wabash R. R. Co.; loaded Clifton Hill, Mo., 2 cars cattle; consignor, C. W. Van Pelt; loaded 10 p. m. August 26, 1907; left 5.30 a. m. August 27, 1907; destination, National Stock Yards; arrived 3 p. m. August 27; distance to National Stock Yards, 159 miles.

C. and A. R. R.; loaded Fulton, Mo., May 22, 1907; destination, National Stock Yards, Ill.; arrived destination May 24, 1907, 9.40 a. m.; should have arrived morning of May 23, 1907; consignor, A. O. Washington; 4 cars; distance to National Stock Yards, 141 miles.

M., K. and T. R. R. Co.; loaded Hico, Tex., consignor, F. W. Hudson, June 5, 1907; destination National Stock Yards, Ill.; arrived destination June 11, 1907,

10.45 a. m.; should have arrived morning of June 9, 1907; 6 cars; distance to National Stock Yards, 844 miles.

Frisco R. R. Co.; 13 cars; consignor, Cassidy, Courtney & Doerr; 8 cars M. Courtney; loaded Beggs, Ind. T., June 29, 1907; destination, National Stock Yards, Ill.; finished loading cattle 11.30 p. m. June 29; left Beggs Station, Ind. T., 2.40 a. m. June 30; arrived National Stock Yards, Ill., 1.15 a. m. July 2, 1907; roughly handled; distance National Stock Yards, 458 miles.

M., K. and T. R. R. Co.; 12 cars; loaded Myers, Okla., July 20, 1907; consignor, G. A. Noble; destination, National Stock Yards, Ill.; 10 cars reached National Stock Yards, Ill., at 4.47 p. m. July 22, 1907, and 2 cars reached National Stock Yards, Ill., at 2.25 a. m. July 23, 1907; distance to National Stock Yards, 484 miles.

Missouri Pacific R. R. Co.; 3 cars cattle, loaded Houstonia, Mo., July 14, 1907; consignor, M. Sparks; destination, National Stock Yards, Ill.; reached destination 3 p. m. July 15; distance, 208 miles.

Frisco R. R. Co.; 12 cars cattle; consignor, M. Courtney; ordered for September 13, 1907, from station agent, Beggs, Ind. T.; delivered September 15, 1907; loaded September 15, 1907; arrived National Stock Yards, Ill., a. m. September 18, 1907; distance to National Stock Yards, 458 miles.

NEW YORK STATE HAY DEALERS' ASSOCIATION,
Auburn, N. Y., March 2, 1908.

Mr. J. E. DAISH,
Washington, D. C.

DEAR SIR:—I have your circular letter in regard to the necessity of the railroads furnishing cars more promptly for the handling of hay. While the past few months we have been able to secure cars full as freely or more freely than we needed, this condition has not been in effect but a short time, as we have been handicapped during the past few years to our loss; and in fact, early this season we were unable to secure what we needed, and I will be glad to take this matter up with our Representative at Washington. Also will bring the matter up at our next meeting to the attention of our association and do what we can to bring about the desired result.

Yours, very truly,

B. A. DEAN,
President.

CHICAGO, November 8, 1907.

To whom it may concern:

We loaded at Lewistown, Mont., at 7 a. m. October 28, 7 cars of cattle, 5 cars belonging to G. H. Kelly and 2 cars belonging to Mr. Garnett. We ran from Lewistown to Manhattan, Mont., where they took our engine away from us and let us stand on a side track for five hours. We then went to Livingston, Mont., where they made us feed. We got into Billings, Mont., at 10.30 a. m. October 31 and were held up on a side track there until 4.15 p. m. This was a run of 115 miles which took thirty hours, and they made us feed again. We expected to load out of Billings every minute, but did not load until 7 p. m. November 1. They kept us on this side track there until 4.30 the next morning, November 2. At Huntley, 12 miles this side of Billings, they sidetracked us two hours. On November 4 we were delayed three hours at Staples on account of a wreck. We ran from Dickinson, N. Dak., to New Brighton Stock Yards in thirty-nine hours.

When we loaded at Lewistown they promised to give us one 44-foot car straight through, but when they loaded at St. Paul they took this car away and we had to load five steers extra to the balance of the cars, which made them loaded too heavy and caused the cattle to shrink all the way from 40 to 50 pounds per head in excess. If we had not been delayed we would not had this extra feed at Livingston, which amounted to \$49 or \$7 per car. We were promised to run through from St. Paul to Chicago in time for Wednesday's market, but did not arrive here until Thursday morning at 3 o'clock, and on Thursday the market had declined 10 cents per hundredweight. We also claim excess shrink on these cattle of 50 pounds per head, together with the extra feed at the stock yards, Chicago.

These cattle were shipped via the Northern Pacific and Milwaukee railroads.

G. C. H. KELLY.
M. GARNETT.

ST. PAUL BOARD OF TRADE,
 SECRETARY'S OFFICE,
St. Paul, Minn., February 13, 1908.

Mr. S. H. COWAN,
New Willard Hotel, Washington, D. C.

MY DEAR SIR: I received your valued communication of the 29th ultimo and, in accordance with your request, submitted a copy of the Culberson-Smith bill to our board of directors, and while it meets with their unanimous approval, advise that a bill similar to this, which will be more expansive, has been drawn by Interstate Commissioner Purdy, and will be introduced in the Senate and House within a very short time. As I know full well that you are not "hide-bound" as to where a bill emanates that has for its object the common good of all, our directors have decided to wait and compare the bills before indorsing either.

We appreciate the amount of good work that your association, through your able assistance, has worked for the weal of all, and wish to assure you that if the bill proposed is not as complete as the one sent us you can rest assured that your bill will be recommended by this organization.

Yours, very truly,

W. H. PATTON, *Secretary.*

TRAFFIC DEPARTMENT, LOUISIANA RED CYPRESS LUMBER,
New Orleans, La., February 5, 1908.

Mr. S. H. COWAN,
Care of New Willard Hotel, Washington, D. C.

MY DEAR MR. COWAN: Your letter of the 31st, inclosing draft of the Culberson-Smith car and transportation service bill, is to hand and noted.

I had already received several copies of this bill, and it certainly has my unqualified indorsement, and I will write to some of our Representatives, calling their attention to the bill and get them to give same their support.

I note you propose to try to get through a further law to prevent the advancement of rates without notice and an opportunity given parties at interest to have a hearing relative to the matter before they are put into effect. In this connection you will find that Congressman Watkins, of Louisiana, presented a bill in the House of Representatives (No. 15855) amendatory to the general act relative to interstate commerce on January 30, 1908, covering this very point. The lumber interests of the United States had taken this up generally some time ago, and have gotten promises from a large majority of the Representatives to work for the amendment to the interstate commerce bill along these lines, provided there is anything done at this session of Congress to give further powers to the Interstate Commerce Commission. The right to a hearing on proposed advance in rates is almost as essential to the lumbermen as the question of getting transportation when we need it, and the cattle raisers and lumbermen should certainly join hands in getting through both bills. I will get the president of our association to write all of our Representatives from Louisiana, as well as write personal letters to them myself.

Yours, truly,

R. H. DOWNMAN.

CITRUS PROTECTIVE LEAGUE,
Los Angeles, February 6, 1908.

Mr. S. H. COWAN,
Willard Hotel, Washington, D. C.

DEAR SIR: At the suggestion of mutual acquaintances I have this day written our Senators and Members of Congress in relation to the Culberson-Smith bill. A copy of this letter I inclose you for your personal information. The only criticism offered in the casual discussion of the merits of the proposed bill was that portion of section 4 referred to in my letter to our delegation in Congress.

This organization is composed of those representing 80 per cent of the citrus output in California, and is more or less known to our

representatives at Washington, many of whom I personally know. I think it will do some good.

Very truly, yours,

A. G. KENDALL,
Secretary and Manager.

Congressman Smith represents my own district and the principal citrus fruit district in the State.

A. G. K.

LOS ANGELES, CAL., *February 6, 1908.*

DEAR SIR: The attention of citrus fruit growers has been called to some proposed legislation by Congress intended to improve the service given shippers by common carriers, and especially to the Culberson-Smith bill, so called, which proposes a reciprocal demurrage feature, providing for damages to the injured party.

The citrus fruit shippers would very much like to see an improvement of service over past or present conditions, as those conditions refer to the furnishing of cars when desired by shippers and the number of days taken to deliver our perishable fruit in the eastern markets. We think the legislation proposed will tend to improve the service along those lines.

If, however, the feature in section 4 of the bill referred to, that of payment of double damage to be made in the case of live-stock interests, is to be retained in the bill, we can see no reason why such damages should not follow all perishable freight, though in the past fruit shippers have been satisfied to get even 50 per cent of actual damage.

The green fruit shipped from California alone to the eastern market amounts to more than 37,000 carloads annually, and the output steadily increasing. During the busy season of citrus fruit from 5 to 15 train loads, of 20 cars each, of oranges must be gathered, iced, and started for market daily.

The Interstate Commerce Commission has given patient attention to complaints arising from the handling of this immense traffic, and should be given the necessary power to act in adjusting differences between the shippers and common carriers in all cases.

The subject is clearly one for Congressional action, and inasmuch as some of the States have defined the rights of shippers and common carriers by statute, it would seem to be the proper thing for Congress to provide for rules and regulations contemplated in the Culberson-Smith bill by legislation to which all the States might conform, and so have in force a unanimity of laws rather than a multiplicity of diverging views of the individual States, confusing to all interested.

It would be gratifying to fruit shippers in California if our Congressional delegation would give special attention to legislation on the subject referred to.

Very truly, yours,

CITRUS PROTECTIVE LEAGUE,
A. G. KENDALL,
Secretary and Manager.

CAMPBELL BROTHERS & COMPANY,
North Fort Worth, Tex., February 24, 1908.

Hon. S. H. COWAN,
New Willard Hotel, Washington, D. C.

DEAR SIR: Referring to a law that is to be acted upon by Congress, which will tend to compel railways to furnish equipment within a reasonable length of time and to require them to give reasonable service after they have been accepted for shipment, will say that I am heartily in favor of such legislation.

I will give you two or three illustrations of the dilatory manner in which certain shipments have been handled; could give you dozens of such cases by taking the time to refer back to them.

During last May (1907) the Tahoka Cattle Company ordered 20 cars to load at Plainview, on the Santa Fe (or Pecos Valley), shipment to be made about 10th of October. After holding the cattle for several days, Mr. Petty, the manager of this company, put up the full amount of the freight to Fort Worth in order to force them to furnish cars, as they advised him they could not fur-

nish cars to Kansas City under any consideration. These 20 cars of cattle arrived here in five different shipments on the following dates: October 29, November 5, 7, 9, and 11. There were many patrons of that line that were compelled last fall to take their cattle back to ranches, being unable to get cars to ship them all.

W. F. Wilson, of Baird, Tex., held 800 calves at Stanton, Tex., twenty days from the date the cars were promised him before he abandoned the shipment altogether, being compelled to turn them back on account of their shrunken condition, and sold the calves, at a heavy loss, to some rancher in that section of the country.

I. W. Gregory, Oklahoma City, Okla., had a shipment of two cars of cattle from Ryan, Okla., destination, Kansas City, which were penned and ready for shipment on Saturday at 3 p. m. (the date I do not recall); were loaded out the following Sunday morning at 5 o'clock. One car of these cattle reached Kansas City Friday afternoon, almost a week later, and the other car Saturday afternoon, too late for market, which caused them to be held over until the following Monday. This shipment was handled by the Rock Island. I can give you many instances of such service as this, which is very detrimental to the interest of the shipper, as live stock is perishable freight. If you need the details of these transactions, advise me and I will get them.

Yours, sincerely,

JNO. K. ROSSON.

THE RECEIVERS AND SHIPPERS' ASSOCIATION
COMPANY OF CINCINNATI,
Cincinnati, Ohio, February 27, 1908.

Mr. SAM H. COWAN,
Care of New Willard Hotel, Washington, D. C.

DEAR SIR: In connection with your letter of February 22, I inclose you copies of letter I have this day addressed to Hon. Charles E. Townsend and Hon. James Kennedy, of the House Committee on Interstate Commerce. When this bill gets out of the committee into the House, we will make an active campaign throughout the State to get the Ohio Representatives to vote for it.

Yours, truly,

E. E. WILLIAMSON, *Commissioner*.

THE RECEIVERS AND SHIPPERS' ASSOCIATION COMPANY OF CINCINNATI,
Cincinnati, Ohio, February 27, 1908.

MY DEAR MR. KENNEDY: I understand that there will be a hearing before the House Committee on Interstate Commerce on the Culberson-Smith car and transportation service bill on March 3. We are in favor of this bill, and hope that your committee will recommend it for passage. When it gets out in the House we will take the matter up with the various Representatives from the different parts of the State of Ohio.

I have looked over this bill very carefully, and it seems to me to be a very conservative measure. It covers a very important feature of transportation that is now only adequately provided for. This bill makes the duty of the carrier clear. We desire to urge you to vote for it in your committee.

Thanking you in advance for your support, I remain,

Yours, very truly,

E. E. WILLIAMSON, *Commissioner*.

HON. JAMES KENNEDY, *Washington, D. C.*

THE RECEIVERS AND SHIPPERS' ASSOCIATION COMPANY OF CINCINNATI,

Cincinnati, Ohio, February 27, 1908.

MY DEAR MR. TOWNSEND: I understand that there will be a hearing before the House Committee on Interstate Commerce on the Culberson-Smith car and transportation service bill on March 3. We are in favor of this bill, and hope that your committee will recommend it for passage. When it gets out in the

House we will take the matter up with the various Representatives from the different parts of the State of Ohio.

I have looked over this bill very carefully, and it seems to me to be a very conservative measure. It covers a very important feature of transportation that is now only inadequately provided for. This bill makes the duty of the carrier clear. We desire to urge you to vote for it in your committee.

Thanking you in advance for your support, I remain,

Yours, sincerely,

E. E. WILLIAMSON, *Commissioner.*

HON. CHAS. E. TOWNSEND, *Washington, D. C.*

Charles J. Austin, president of the National Hay Association, speaking of the Culberson bill, says, under date of March 4: "Our demurrage and reciprocal demurrage committee think very highly of this bill."

W. B. Moore, commissioner Dayton (Ohio) Receivers and Shippers' Association, under date of January 6, 1908: "Beg to state that we are thoroughly in accord with your wishes in this matter, and will do everything possible to secure the enactment of legislation along the proposed lines."

S. BASH & Co.,

Fort Wayne, Ind., February 28, 1908.

HON. S. H. COWAN, *Washington.*

DEAR SIR: Your esteemed favor of the 22d just at hand. I am with you most heartily and have written Mr. Charles J. Austin, president of the National Hay Association, my hearty indorsement of the bill, and also indorsing this evening written our Congressman, Hon. C. C. Gilhams, asking his attention and cooperation. Kindly let me know what, if any thing, I can do further here.

Are our Senators in line, Hon. Albert J. Beveridge and Mr. Hemenway?

Very respectfully,

CHARLES S. BASH.

FORT WORTH, TEX., *December 30, 1907.*

HON. W. P. HEPBURN,

Chairman Committee on Interstate and Foreign Commerce.

MY DEAR MR. HEPBURN: At your personal request, for which I thank you, and in hope of aiding my clients, the stockmen, in particular and the public in general to get relief from the insufferable burdens of a wretched railroad service, I write you some of the results of my investigations of the subject, as it relates to the West and Southwest, and express my ideas of an adequate law to cure the evil, not merely as to live stock, but as to all freight.

Remedial laws should always be directed at the evil. What is that in this instance? It is the absence of laws regulating interstate railway service. The result, from absence of such law, is that the carriers have lowered the quality of the service wherever to do so was deemed to their own advantage, often, perhaps, when it was to their disadvantage, as it turned out. The delays in furnishing cars, the failure to furnish cars, the great length of time consumed in transporting freight, the congested condition at terminals, the delays in loading and unloading, and of delivering cars for other purposes are all matters of such common knowledge as to dispense with proof. If proof is wanted, the investigations of the Interstate Commerce Commission, a year ago, contains the details of a shocking condition, which seems not generally to improve. In the live-stock traffic in particular the losses have been enormous. Weeks, and even months, have often elapsed after cars are ordered and shipments ready, before cars are supplied. Trains are loaded down with all sorts of freight, and very slow average time is the result. The Agricultural Department has investigated 2,000 cases of keeping live stock on cars beyond the legal limit, with the result that it is shown that the average speed is less than 8 miles per hour.

The causes of not supplying cars for live stock are: That railroads, generally in the West, do not like for their cars to go off their respective lines, and they do not freely exchange empty for loaded cars, and the slow movement—indeed, idleness of cars—destroys the usefulness of cars; many stock cars are

diverted to other business, while live stock cannot be shipped in other cars. It is usual to load stock cars with coke, coal, railroad ties, iron, and supplies, and lumber articles, brick, etc., and with the very slow movement, such use puts them out of service for live stock, and so long as these uses, abuses, and slow movement, coupled with the refusal to furnish cars to go off the line which loads the live stock, and refusal to freely exchange cars exists, there will be a shortage of cars, no matter how many cars there may be.

These same conditions, in the main, exist as to transportation of other freight, and must have resulted in loss of millions of dollars, which can be proven. One thing stands out in bold relief, and that is the utter indifference, apparently, of those who direct the policies of the Western roads, to give a good service. It is perfectly plain that the main policy is money making; everything else is made subservient to that one idea, and that is exactly what is the matter with the service; and, therefore, we need expect no improvement till the strong hand of the law fixes sufficient penalties on the railroads for negligent or no service to make it to their advantage, from the standpoint of dollars and cents, to give good service; at the same time the law should, so far as possible, aid the roads to overcome such abuses as arise from inability to secure exchange of cars and detention of cars by shippers. I assert, what I am prepared to prove, that with exception of about three systems of roads west of St. Louis and Chicago, the locomotive miles per mile of line, and the freight train miles, per mile of line, materially decreased in six years, 1900 to 1906, notwithstanding a very large increase in the tons hauled 1 mile. This was because of the very great increase in train tonnage, but at the great sacrifice of the public, in point of service, and the reduction in performance of service of cars, producing what is generally called a "car shortage." It is not so much a question of car shortage as want of car performance. The number of freight cars in the aggregate, considered in connection with the increased capacities and carload minimums of the Western lines, increased as much or more during the period named as the tonnage of the same roads. So, the locomotives show a similar increase. Of course, there are some exceptional instances, but the rule is as stated and the exceptions few indeed, and all explainable by special conditions, like extraordinary increase in volume of traffic on a particular line. These facts I am prepared to prove indisputably before your committee, from statistics of the facts taken from the annual reports of the roads themselves, for each year, ending June 30, 1900 to 1906. (I haven't the data tabulated for 1907.)

Increased length of trains, and inability to make any schedule, and detention of cars on sidings, necessarily renders more sidings necessary in order to avoid delays for meeting and passing on single-track roads, as nearly all our western roads are. So the extraordinary amount of yard work to make up long trains, and to hold cars till sufficient accumulate to make up these heavy trains, requires more yardage and storage tracks, and infinitely more switching. The result is that the main line is less used, being fewer trains hauled over it, per mile of line, while the yards and sidings are much more used than in 1900. Notwithstanding the necessity of much more sidings and yards, they increased, in ratio of main line, less than 4 per cent on the average in six years mentioned. The supposed economy of maximum heavy train loading, popularly called the tonnage system, is a very doubtful economy, when carried to the extent that it has been for the past few years, particularly upon single-track roads. Many local managers of operation so consider it. Mr. Gardner, general manager of the Chicago and Northwestern Railway, so testified before the Interstate Commission, and so did Mr. Russell Harding, general manager of the Missouri Pacific. Several others equally competent have given similar evidence, and it has been a matter of dispute in the columns of the Railway Age between railway operators.

It necessarily follows, from my premise, that the failure to promptly use, and keep in use, the equipment, and to freely exchange it at junction points, is the cause of the so-called "car shortage" and insufficient and tardy service, and what we need most is to remedy that evil.

I concede, of course, that a railroad has the right to manage its own business, and to adopt the tonnage system or not, as it pleases, but that is subject to the fundamental condition of entering the business of common carriers, that they will give a reasonable service for a reasonable rate, and will perform the service for all with equality and efficiency.

Economies in the service are to the benefit of the railroads, and incidentally for the public, but not so of economies which result from insufficient service, to the damage of the shipper and deprivation of reasonable transportation service

at reasonable rates. When the railroads adopt the tonnage system to make money they have a right to do so, provided they do not impair the service so that it is not fairly efficient, but only on that condition.

There is one remedy only, and that is to fix penalties for failure to give reasonable service, provide for free exchange of cars by connecting lines, and prompt loading and unloading of cars by both railroads and shippers, so that there will be no obstacle to the railroads commanding their equipment and getting back as much as they deliver, and then compel them to give the service, under proper penalties, leaving it to them to adopt such means as they choose.

It is constantly repeated from railroad sources, and erroneously believed by many, that since it takes more cars than they have to give prompt service, and since they can't get cars, therefore they can't be expected to furnish them. Neither of the facts involved in this contention are true, because, first, as can be shown, the cars are sufficient if frequently and promptly used; and, second, car shops could have been installed by the roads long ago, with sufficient capacity to meet the increased demand, and, in addition, had the demand been made in time to independent car shops, they would have managed to turn out sufficient cars. We exported over \$9,000,000 worth of cars, freight and passenger, during the first two months of this year. Why were they not bought here? The truth is, the New York manipulating managers didn't want to spend the money to secure more cars. But, if it is want of foresight, how are we to expect it to be used in future unless the law compels it. It also said that sufficient locomotives for speedy movement of cars could not be obtained, because the factories were overburdened with orders. This, I say, will bear investigation, and ought not to be accepted as a fact, for the reasons: First, lighter loading of trains and more frequent use of locomotives will accomplish the frequent use of cars and prompt service, possibly at some greater expense; and, second, timely effort and willingness to spend the money necessary would have procured the locomotives. So, in both cases, it is a question of sufficient expenditures to accomplish the result of an efficient service. Again, it should be noted that, for the first ten months of this year, we exported 746 locomotives, and the query is, why is this so if the demand here exceeds the capacity of our locomotive works?

Of course, it is repeatedly claimed of late, that railroads can't borrow the money to do these things, or to build additional sidings and yard tracks, and hence should not be expected to do it; but the fault in this argument is, first, that it was untrue up to last year; and second, that it assumes that a railroad company owes this duty to provide facilities, except it can borrow the money to do it.

I assert, and propose to prove, that every system of road leading out of Chicago and St. Louis has for seven years earned amply sufficient, and has been able as a corporation, to equip itself for a constant and evident growing business, had it seen fit to spend its money that way. It is no answer to this to say that certain subsidiary lines, whose stock belongs to these great systems of railroad, could not procure the equipment. Neither can it be said that the growth of business is so phenomenal; it has been in almost a constant ratio since 1897, equally open to the foresight of enlightened men.

In Texas, Oklahoma, and Kansas there are only seven systems of railroads, viz.:

The Santa Fe System; the Rock Island System, with which is affiliated the Frisco System; the Colorado and Southern System; the Missouri, Kansas and Texas System; the Gould System, and the Southern Pacific-Union Pacific systems. These systems practically embrace all south of Missouri River lines south of Nebraska and west to the Pacific. The annual reports of each will show their entire ability to have bought, out of net earnings, all necessary equipment, and to have built all sidings necessary, after paying interest on bonds equal to their value, and after paying fixed charges.

As an example of relative equipment, tracks, tonnage, etc., shown for years ending June 30, 1900 and 1906, take the Santa Fe System as fairly illustrative of a southwestern line reaching, as it does, from Chicago, via Kansas City, to all important Kansas points to Galveston and other important Texas points, to many Oklahoma, New Mexico, Colorado, and Arizona points, and to the Pacific coast: Mileage in 1900, 7,768; ton miles per mile of line, 456,502. Mileage in 1906, 8,827; ton miles per mile of line, 665,878. Increase of railroad mileage, 13.6 per cent. Increase of ton miles, 46 per cent. Freight cars owned in 1900, 26,338. Freight cars owned in 1906, 42,769. Increase, 62 per cent. Stock cars owned by the system in 1900, 2,790. Stock cars owned by the system in 1906, 4,181. Increase, 50 per cent.

Aggregate tons of live stock moved by constituent roads, 1900, 1,263,961 tons; in 1906, 1,203,550 tons, a decrease of 5 per cent. There are considerable duplications in the aggregated tonnage, but it is sufficiently accurate for comparative purposes. The tons of live stock carried 1 mile is not ascertainable from the reports.

As is well known, a large tonnage is carried in private cars, like refrigerator, fruit, and stock cars, but they were not less in number in 1906 than in 1900, but greater.

So it is that a large amount of freight is always moved in foreign cars, but that has always been so, and the cars of the company off its line supposedly offsets foreign cars on its lines.

Freight locomotives owned in 1900 by the system, 1,085, and in 1906 the number had increased to 1,651, or 52 per cent.

The capacity of both cars and locomotives increased very largely. Actual car loading (an average of all loaded cars) increased about 15 per cent, while the traction power per locomotive increased more, and, added to improvement in track and grades, increased probably not less than 25 per cent per locomotive.

The per cent of increase of yards and sidings trackage to the main track mileage was about 4.5 per cent, undoubtedly much less than requirements of the growing business, as it is well known the yards and sidings have been crowded for years.

Now, the conclusion from these figures inevitably follows that, if this system of road was so equipped that it could and did perform a satisfactory service in 1900, there is no apparent reason why it should not have done so in 1906, because its equipment and facilities, in proportion to the tonnage, is much superior, both in quantity and capacity, with the single exception of yards and sidings trackage.

As another example, take the Burlington System, occupying a territory farther north and northwest:

Mileage in 1900, 6,221; in 1906 it was 8,473. Per cent of yards and sidings tracks to main line, in 1900, 20.51 per cent; in 1906, 24.79 per cent. Total freight cars in 1900, 37,236; in 1906, 46,527. Freight locomotives in 1900, 951; in 1906, 1,435. Tons carried 1 mile per mile of line in 1900 amounted to 477,367, while in 1906 it was 732,306. Stock cars in 1900, 5,291; in 1906, 6,663.

Live-stock tonnage not reported, but evidence before the Commission showed it to be approximately 120,000 cars, and the Santa Fe System approximately 100,000 cars.

The percentage of increase in average car loading of all freight was about 30 per cent for the six years; the number of locomotive freight train miles per mile of line decreased on both these roads from 20 to 40 per cent, while the freight train tonnage increased over 90 per cent in case of the Burlington and 30 to 40 per cent in case of the Santa Fe.

When all these facts are considered, and the fact that the service was fairly good in 1900, there exists no ground for the contention that the roads can not now give good service, if they will be content to give more frequent use of the equipment and greater promptness, possibly at slightly increased cost, though that is doubtful.

The bill to which I wish to call your attention, namely, Senate bill 483, introduced by Senator Culberson, and House bill —, introduced by Congressman Smith, of Texas, declares the duty of railroads to shippers to furnish all necessary facilities and to give prompt and efficient service, and creates a new duty of railroads—to exchange cars as between each other, to load the same for carriage to destination, to any point on a through route to which there is a joint rate, and compel shippers to promptly load and unload cars, to regulate demurrage charges—and fixes liability and penalties for disobedience of the law or order of the Commission thereunder. It empowers the Commission to make and prescribe rules governing the service, in furnishing cars, exchanging cars, and demurrage. Certainly the shippers are entitled to it and the railroads will be immensely benefited by it. The principles of these bills, if enacted into law, will go far toward providing the means whereby the railroads may perform a satisfactory service and compel them to do it.

We want a fair service for a fair rate, and this the bill is intended to secure. Conditions demand such an enactment; the country demands it.

Very respectfully,

S. H. COWAN,

*Attorney for American National Live Stock Association
and Cattle Raisers' Association of Texas.*

MONDAY, *March 9, 1908.*

Committee called to order at 10.40 a. m., Hon. W. P. Hepburn in the chair.

CAR SHORTAGE; SMITH-CULBERSON BILL.

Mr. FAULKNER. Mr. Chairman, there is a gentleman here, Mr. Lincoln, a representative of the Union Pacific Railroad, who came on to be heard before the Senate committee and also to appear before this committee. If possible, I would like to have him heard now.

The CHAIRMAN. Very well; Mr. Lincoln may proceed.

**STATEMENT OF MR. W. D. LINCOLN, CAR-SERVICE AGENT,
UNION PACIFIC RAILROAD.**

Mr. LINCOLN. Mr. Chairman and gentlemen of the committee, I represent the Union Pacific Railroad, and my name is W. D. Lincoln, car-service agent in charge of distribution of cars and transportation of that railroad. I appear before you to talk a little upon the subject of reciprocal demurrage, or the subject-matter contained in the Smith-Culbertson bill, from a railroad standpoint. I have a statement with me which I would like to file, and I would also like to make a few remarks in support of the statement.

The CHAIRMAN. Please mark the statement and hand it to the stenographer.

Following is statement filed by Mr. Lincoln:

Section 1: What is a reasonable time? Suppose all shippers wanted to ship or load the same week. For instance, 100 hay shippers wanted to load 50 cars each, same week, would that be a reasonable time and a reasonable demand for cars? What would become of the market if cars were furnished? Take into consideration shippers of other commodities also ordering cars in like numbers. Would it be a reasonable demand on the railroad?

It is not fair to all railroads to expect them to receive cars from their connections and send through without transfer. They may have a large surplus of certain kind of cars that would have to be moved empty along with the car that its connection gives it. Why should not a railroad transfer the freight into these empty cars and thereby save an empty haul in both directions? For instance, there is a demand for fruit cars in California. The Union Pacific has a large number of them at Council Bluffs, which have to be moved to that territory. Why should they not be allowed to transfer the freight of other cars to the fruit cars to obtain loading for them, bearing in mind that if the other railroads' cars are sent to California under load there is no return loading for them, so the railroad is hauling fruit cars to California empty in the same trains they are hauling other freight cars loaded, and hauling the other freight cars east empty in the same trains they are hauling fruit cars east loaded? Is that business? Is that justifiable and fair to the stock and bond holders? Would you handle your own business in that manner? No, sir. Therefore this section should not be favorably reported on.

Of course the freight should not be unnecessarily delayed in transfer, but should be transferred within twenty-four hours of receipt. If any damage on account of transfer, the shipper has redress in a

claim for damage, and they never overlook a chance to make a claim, but in this connection the shippers should be forced to pack their freight in more secure packages. They are using the frailest of boxes, and the cooperage is so poor that they are now lining barrels with glue to keep the oil from leaking out of them. You take the slack out of a train, or make a sudden stop, and you break the glue in some of the barrels and then your oil leaks out. I know of a case where a certain firm was shipping some cotton-seed oil and one of the truckmen set the barrel down a little hard and the glue cracked so they ran and got a pump and an empty barrel and pumped the oil out, as it had begun to leak immediately.

Section 2: This is a pooling proposition and is not feasible, for you say a railroad can demand return of its cars. Take the Union Pacific, for example. The Chicago and Northwestern delivers a large number of cars to it loaded for California. They are out of our hands and control. The Chicago and Northwestern demand of us return of its cars. We are helpless. They demand of us an empty for every loaded car. That means we will have an empty haul per mile for every loaded mile. They will not accept as an offset for cars they give us under load the loaded cars which we give them destined beyond their line, for they say they are out of our control and no benefit to us. They may load 500 cars of rail and deliver to us, not asking us for any empties for this shipment, as they had a surplus, and after shipment has gone forward, demand their return. Not take our cars because they have no use for them. They want their own cars to load in some other direction.

Gentlemen, let the railroads settle this among themselves. They will furnish the cars for the prompt movement of business; that is where they make their money. They are not tying freight up and letting it lay on sidetracks on purpose. They will get it to destination just as quickly as their power will move it, and when business again picks up they will be in better condition to handle it. They have got additional power and are putting their power in condition during this lull.

For the past two years none of the railroads have had the opportunity to shop their power. During the past two years I venture to say there have been over 200,000 new cars built. The Union Pacific has had built 1,757 new cars and 120 engines during the fiscal year ending June 30, 1907. There has also been a large amount of double track laid down. The Union Pacific has laid nearly 300 miles and expects to lay more this year. All the railroads are getting in better condition to handle their business and should be let alone. The volume of business offered to the railroads in the past two years has been unprecedented and they were swamped. In fact, the factories were swamped. Why not make a law to impose a penalty on some of the steel mills, car works, and other producers? They were all behind on their orders—some as far as a year; but the poor railroads had to keep freight moving at the same time they had orders in for locomotives, cars, rails, etc., and could not get them; but nothing is said as to a penalty for this shortcoming.

Section 3: Do not burden the Interstate Commerce Commission with making rules and regulations providing for the time and manner of demanding cars or giving notice of shipments and for the

time within which cars shall be furnished to shippers. The railroads will furnish the cars and move them just as quickly as it is possible to do so—that is their stock in trade—that is what they are built for; that is where they make their money. Do not burden the Interstate Commerce Commission with making rules and regulations regarding the interchange of cars between railroad companies. They have rules of their own, and there is no trouble. They have rules and rates regarding compensation for use of cars, for cars damaged or destroyed, and no friction. The M. C. B. have rules and also an arbitration board and its finding is final.

Do not burden the Interstate Commerce Commission with any demurrage rules. The railroads have demurrage rules, and they are very liberal. If any shipper or consignee has any complaint, let him present it to the Interstate Commerce Commission, and the railroads will be upheld. In fact, their demurrage rules are too liberal. Forty-eight hours on a large number of commodities is twenty-four hours too much. Take grain for instance. Why give forty-eight hours free time? The car will be loaded in two hours at the small country elevators. Why give forty-eight hours in unloading grain? Practically all of the up-to-date elevators will unload 75 cars per day. Ninety per cent of your industries will load and unload cars in four to five hours. Why make it forty-eight hours? Of course, there are some commodities and places that will require forty-eight hours. We give it to them as a matter of fair business equity.

You say three days' notice is ample for a railroad to furnish five cars or less, for loading; five days for ten to five cars, and eight days for over ten cars. Look out! You have a colored man in the woodpile. You have a joker here, and you are opening the door for legitimate rebating. You are also going to penalize the railroad if they don't furnish the cars, but what are you going to do to the shipper or the would-be shipper if the cars are furnished and the would-be shipper don't load them. How is the railroad to get any redress? They may sue for damages, but if the would-be shipper is an irresponsible party, what would they do with a judgment? This is a one-sided deal; and it is not fair to the railroads.

You say the Commission should be empowered to prescribe a minimum time within which freight shall be moved from point of origin to destination, or delivery to connecting carriers. This is something no person on earth can regulate. You have a lot to contend against—wind, weather, power, break in twos, accidents, meeting and passing of trains, and a congested railroad. The railroads are fined if mail trains or trains carrying the Government mail are thirty minutes late at terminals. Are we to give the freight trains rights over the passenger trains? No, sir. The railroads want to make their schedule with freight trains. The quicker they get to the district terminal the better off all concerned are, and no overtime. Freight trains are not held on sidetracks just for fun. Take a freight train that has a schedule of 12 miles per hour—this is the average—and that train will make an average speed of 17 to 20 miles per hour to make its schedule over the district. They have to clear the time of passenger trains ten minutes. They want long time to go to a station against a passenger train, for they have to stop at the first passing track switch and head in, and there is a liability of

breaking in two. After the passenger train has passed they have to pull out of the passing track, stop and close the switch, and start again. If they make a good meeting point it will take them at least twenty-five to thirty minutes for each passenger train. This applies to both single and double track, except on double track they have only to keep out of the way of passenger trains following them. Therefore, do not put a minimum speed limit on movement of freight, as the railroads will move it just as fast as it is possible to do so. They want to get it to destination so cars can be released. The more cars available, the more business the road has.

Section 5: As stated before, the railroad is liable to the shipper if cars are not furnished, but the shipper is not liable to the railroad if cars are furnished and not used. This is not fair; more especially when you want to double the damage for failure to furnish cars for stock. What will you do with the stock shipper that orders 10 cars to load to-day and his commission firm wires him, "Market is off, don't ship?" What redress has the railroad company got for hauling those cars, say, 100 miles and then not used?

You want to give the railroad the right to unload freight at shippers' cost and expense. If they did, they would have to put on a watchman to see that the freight was not carried off, and they would be liable for the freight so unloaded until the charges had been paid.

The railroads will agree as to what shall be paid for use of cars, and they now have rules for settlement of cars destroyed or damaged.

Section 6: Here you are again penalizing and fining the railroads, and the fine goes to the Government for each violation to furnish cars to shippers—this penalty, in addition to the one the shipper is supposed to get. Why not put the shipper in the same boat with the railroad, and fine the shipper not less than \$25 or more than \$100 for each day he fails to load the cars that are furnished on his order? These penalties and fines are all on one side, and I would ask the honorable committee to recommend the bill do not pass.

In Idaho and Wyoming during the sheep movement cars were ordered by persons who did not intend to use them, but sell them to other shippers who could not get cars at that time, as their turn had not come. It is not unusual for the railroads to have orders on their books at the last of the sheep season for 1,000 to 2,000 cars, and all at once no cars wanted, and they have to haul the empty cars back. We generally hear the sheep men say about the time the sheep business is at its height, that if they don't get cars they will have to drive sheep back to the ranges, but we have managed to move the sheep each season. If the railroad could furnish all the cars ordered at the time wanted, there would be no market. In fact, if you flood any stock market with 30,000 to 40,000 sheep one day, it drops a few cents. So for the good of the shipper it is best that the railroads can not furnish all the cars at one time.

Our rule is, in handling live stock, that where there are shipments of 15 cars or over, in one train in Wyoming or the mountain districts, we will not have more than 30 cars, or 1,000 gross tons, of all kinds of freight in that train, and 45 cars, or 1,500 gross tons, in Nebraska or Kansas. We have no speed limit on stock trains, but we try to make 15 miles per hour in mountain districts and 17½ miles on plains or valley districts. Superintendents can cut tonnage to move traffic if in their judgment it is best to do so.

The 36-hour law on live stock tends to lower the average number of miles per hour on shipments from loading point to destination, as it is not safe to take chances. If you have eight hours to go from one district terminal to another, where there are feeding yards, the superintendent is not going to take the chance, but he is going to unload the stock. Ordinarily, he could make the run in six to seven hours, but something unforeseen may occur—train break in two—car derail at a switch, and then the 36-hour limit will be exceeded and the railroad fined. We had a case where we had a shipment of sheep unloaded at Rawlins; we had eight hours to go to Laramie and unload to be within the 36-hour limit; could not afford to take the chance. Shipper filed a complaint with the Department of Agriculture because he had to unload at Rawlins—claimed bad water. Now, the water at Rawlins is as good as any Lake Michigan water. It is pumped from the North Platte River to Rawlins—15 miles, and it is pure mountain water—very little alkali in it. I just cite this to show the disadvantages the railroads are laboring under, when they are doing all they can for the benefit of the stock shipper. Stock trains are generally given preference over all other trains except passenger trains, and sometimes to help out a stock train, a passenger train is put on the sidetrack. They are very often run as section of passenger train with the same rights as a passenger train.

I had the pleasure of attending a meeting of the Wyoming Wool Growers' Association January 9 and 10, and the president in his address tried to impress upon them the importance of fattening their sheep on the ranches instead of shippers trying to ship their sheep from the range to the market in sixty days. It causes a congestion, shortage of cars, and low prices.

Referring to Mr. Cowan's statement that the average number of miles per car per day is between 20 and 30 miles, I consider 32 to 34 miles per day a good average for freight cars. You must take into consideration that this average includes all the cars which are in the shops and in the yards in bad order. For illustration, take a car loaded with lumber. It moves from originating point to destination, 100 miles, in one day. It will take two days to unload the car. You will notice this car only averaged $33\frac{1}{2}$ miles from the time it started until it was released and ready to reload. Stock cars during the busy season will average from 60 to 75 miles per day. This on account of the quick loading and unloading of cars after arrival at destination.

For the fiscal year ending June 30, 1907, Union Pacific revenue freight cars averaged 32 miles per car per day, of which stock cars averaged 41.7 miles per day. The highest average per day during any one month was in September, when they averaged 71.7 miles per day; lowest in February, when they only averaged 25 miles per day.

The average number of gross tons per train for year ending June 30, 1907, was, main-line trains, not including branches, 1,084, whereas during the months of the heaviest movement of freight the average was, October 1,112 and November 1,060. This shows that during the months of our heaviest movement of freight our average tonnage per train is not materially increased.

The average speed which we made on stock trains of 15 cars and over last fall was, Green River to Cheyenne, 15 to 17.4 miles per hour. Cheyenne to North Platte the average was about 15 miles per

hour. North Platte to Omaha they ran from 10 to 18.6 miles per hour. You can notice as the congestion increases the speed diminishes. There was at that time a congestion from Sidney to Missouri River, whereas west of Sidney there was very little if any congestion, and were able to make our stock schedules where the congestion did not exist. At the present time our stock trains are about making their schedule.

I notice in a statement filed by Mr. Cowan, testimony of Mr. C. W. Merchant, he claims that one cause of shortage of stock cars is on account of loading them with other than stock. Now it is a fact that 45 per cent of the mileage of stock cars is empty. Railroads, whenever possible, will load stock cars with any kind of freight suitable in the direction of which they would naturally be moved empty. They are most generally loaded with ties or rail, and as it is company material, they are unloaded promptly on the ground. If they would not use the cars for this purpose, they would be moving cars empty in same trains in which they haul this material. Naturally, it is economical to use cars and it does not keep them out of the stock service, as they are being moved loaded in the direction of which they would naturally be moved empty.

Mr. McKinzie, when he was before the committee on February 14, made the statement, in answer to a question from the chairman, page 66, would they (the railroads) rather carry other freight than that freight (meaning stock), Mr. McKinzie said "Yes, because they do not have to pay for this train service. They leave the cars standing there until they get heavy trains, which they can readily move." Now it is a fact that during the years that these Texas cattlemen have been complaining about poor service all the railroads have had more business than they could handle, and did not have the power to move what business was in sight. I can safely say that there has been no time with the past two years, up to November 1, when any railroad had to wait for cars to fill up trains at district terminals. The trains were waiting for the engines.

Mr. de Ricqlès in his testimony claims that a reasonable speed is 15 miles per hour on the mountain roads and 20 miles per hour on the plains. He does not take into consideration that some trains have got to sidetrack for others. Take a fast passenger train. Their time-card schedule runs from 35 to 40 miles per hour, but to enable them to make this schedule and enable them to make the stops they have to run from 45 to 55 miles per hour. The average speed of a freight train which has a schedule of 12 miles per hour is from 18 to 22 miles per hour to make this schedule.

Referring to Mr. Cowan's statement regarding tonnage of the railroads in 1900 and 1906, would say that the railroads were, naturally, hauling more tonnage to the train in 1906 than they were in 1900. This on account of improved conditions of roadbeds, also heavier rail and heavier power, but taking into consideration the density of traffic, they were making as good time in 1906 as they made in 1900. In 1900 the traffic was light; very few trains on the road and very little to delay trains after they started from terminals.

There is a good deal of difference in a layman telling you how to do a thing and a man of experience in the business trying to accomplish what the layman thinks is very easy to do. I have known of cases where passengers on trains would be delayed on side tracks

forty or fifty minutes, waiting for another train, and they would say, "Well, we could have gone to the next side track for this train; why are we held forty or fifty minutes here?" They do not know the prospects are that train had an engine failure or was delayed in between the passing tracks, and the delay was unavoidable, or the train which caused the trouble could not be reached by telegraph. Therefore, you can not let the other train go forward unless you invite an accident.

Mr. LINCOLN. The first section of the bill treats the subject as to reasonable time in furnishing cars, but it does not state what would be considered a reasonable time. It does not take into consideration the difficulties in a large number of shipments of the same commodity in ordering cars on the same day. If the number of cars ordered by the different shippers for loading on the same day were furnished in a great many cases it would affect the market, as the railroads intend to furnish cars just as quickly as it is in their power to do so.

The CHAIRMAN. You say that the prompt furnishing of cars might affect the market. Do we understand that the railroad companies exercise a supervision over the furnishing of cars because of the effect that prompt furnishing might have on the market?

Mr. LINCOLN. I did not intend to convey the idea that the prompt furnishing of cars would affect the market in that light; for instance, take it in the hay districts, where, say, 100 hay shippers wanted to load the cars in one week. It would hardly be possible to furnish each shipper with the number of cars he wanted, but if the cars were furnished and the market was flooded with hay, then in that case the market would naturally be affected. But the railroads do not wish to affect the market in that way; that is, they do not want to have anything to do with it. I was just mentioning the case in connection with certain places where it would affect the market if they furnished all the cars at the time they were ordered.

Another clause in the bill is the reciprocal clause, or the free interchange of cars. This free interchange of cars is right in one way, but the railroads at times have a large number of cars which they wish to move in the direction in which their traffic is moving, and they would like to have the privilege of transferring the commodities in these cars to save them an empty haul; for instance, when the fruit cars are being moved to California to move the fruit shipments from California east, there will be three or four hundred cars to move out to California. Unless they can get loading for those cars they will have to be moved empty. If they are given the privilege of transferring freight from other cars that are being delivered to them, it will save that empty haul upon a large number of cars that they would naturally haul west with this freight.

The CHAIRMAN. If the fact that the movement of a certain quantity of freight, we will say from a California point, involves the fact that to reach that and to comply with the movement it is necessary to haul the empty cars long distances, does that condition affect the rate, and is that taken into account in the fixing of the rate?

Mr. LINCOLN. I do not know much about the rate proposition, because I am a transportation man and not a traffic man, so I would not like to answer that. But I will say that the traffic department does confer with the operating department as to this empty haul in fixing the rates.

Mr. TOWNSEND. Mr. Lincoln, do the roads generally that you are acquainted with have sufficient cars with which to do the business of their roads?

Mr. LINCOLN. For the past two years, up to the 1st of November, the roads were short of equipment, but it was on account of inability to procure them from the factories, the car works, and from the locomotive works. One reason for the shortage of equipment was on account of the shortage of the power to handle the cars and on account of the shortage of track room—that is, not enough double track.

Mr. TOWNSEND. Do all of the roads have sufficient equipment, do you think, or do some have sufficient and others much less than what is necessary?

Mr. LINCOLN. Some have sufficient and others do not have sufficient.

Mr. TOWNSEND. Supposing that you could arrange some plan whereby each railroad company could in time—in a reasonable time at least—get its equipment back on its road. That would disclose, would it not, which had sufficient equipment and which road had not?

Mr. LINCOLN. Yes, I think it would.

Mr. TOWNSEND. And if that could be determined would it not be quite an easy matter to solve the car-shortage proposition so far as lack of cars is concerned.

Mr. LINCOLN. You could solve the problem as to who was deficient in equipment.

Mr. TOWNSEND. Is it the custom of the railroad companies in getting cars from other lines to ship them on, away from their point of starting?

Mr. LINCOLN. No, sir. Take the grain roads; when the grain is moving very heavily it is impossible for them to get enough cars to take care of the movement, and if they were to buy enough cars to take care of the movement they would have a surplus of cars during about eight months out of the year, so they naturally call upon the lines which move the grain from their connection for a proportion of cars to take care of that movement.

The CHAIRMAN. I have seen the statement that the average rate of speed of a car of freight was 25 miles a day. I have seen the newspaper statement that in a speech delivered by Mr. Hill he alleged that that was the average rate at which freight moves. Some gentleman here has said that 25 miles was the average rate. Do you believe that to be true?

Mr. LINCOLN. That is the average miles per car per day.

The CHAIRMAN. That is, taking the number of all cars in the United States and all the miles of the movement?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. In your judgment isn't it possible to a great deal more than double that by a proper and efficient movement of cars?

Mr. LINCOLN. Well, it is.

The CHAIRMAN. What is the reason that that small average is tolerated by railroad men; that is about a mile an hour.

Mr. LINCOLN. In order to answer that I will have to explain regarding the way they work that average up. They take the number of miles made by the cars and divide it by the number of days, which includes cars in shipment and waiting repairs, it includes cars that are waiting unloading—for instance, you can take a carload of

lumber moving for 150 miles in one day, or twenty-four hours, and that car will lie on a side track for two or three days before it is unloaded. That delay goes into the average miles per car per day, and that will bring that car down to about thirty or thirty-five miles a day. But the average that Mr. Hill spoke of takes into consideration all the cars on all of the railroads. On a coal railroad the average is low, while on the roads where you have a small amount of coal the average is higher.

The CHAIRMAN. On your road, the Union Pacific, after a train is loaded at San Francisco, or rather at Oakland, is there any difficulty in moving that car right along—that is, any difficulty in the way of safety, or impossibility because of high speed of moving that at the rate of 300 miles per day?

Mr. LINCOLN. Three hundred miles a day is a little high.

The CHAIRMAN. That is 12 miles an hour, and a little over.

Mr. LINCOLN. Of course you have got to take into consideration your stops at district terminals to change engines and crews, the water stops, and your stops for orders, meeting trains and so on. You take a train with a schedule of 12 miles an hour moving from a district where there is heavy traffic, and to make the schedule of 12 miles an hour the train will have to run from 20 to 25 miles an hour between stations.

The CHAIRMAN. Ordinarily that can be done with safety, can it not?

Mr. LINCOLN. Yes, it is done every day.

The CHAIRMAN. What is the schedule of the train moving at the highest rate of speed from San Francisco, we will say, to Omaha, on your line?

Mr. LINCOLN. It is from 12½ to 13 miles an hour.

The CHAIRMAN. That is the schedule?

Mr. LINCOLN. That is the schedule.

The CHAIRMAN. Can trains ordinarily make that on time?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. Without peril?

Mr. LINCOLN. They can at the present time. When there is a very heavy traffic movement there will be greater delay, and they would have to run faster between stations.

The CHAIRMAN. Suppose that you had a double track, would there be any difficulty then?

Mr. LINCOLN. There would be a difference, because then you would only have to get out of the way to avoid the following passenger trains, and you would have no passenger or freight trains to meet.

The CHAIRMAN. Under such conditions, with the double track on your road, what would be a safe rate of speed for a freight train moving from San Francisco to Omaha?

Mr. LINCOLN. Do you mean a scheduled speed?

The CHAIRMAN. Yes; a safe and proper schedule speed.

Mr. LINCOLN. I would not want a schedule of over 15 miles an hour.

The CHAIRMAN. In your judgment, could that be maintained?

Mr. LINCOLN. Yes, sir; on a double track.

The CHAIRMAN. And about 12 miles an hour on a single track?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. That means that you could run all classes of freight in that way, so far as the mere matter of movement was concerned.

Mr. LINCOLN. Of course you have got to take into consideration your grades.

The CHAIRMAN. I am speaking now of your road.

Mr. LINCOLN. Well, we could run those trains at a speed of between 12 and 15 miles an hour on a double track. We would naturally have to run them a little faster on the valley lines than upon the mountain lines on account of the grades, but the average I think would be between 12 and 15 miles an hour.

The CHAIRMAN. Are you speaking now of a single or double track?

Mr. LINCOLN. A double track.

The CHAIRMAN. I am asking you now with regard to the single track.

Mr. LINCOLN. Upon a single track we would not want to figure upon over 12½ miles an hour as the maximum.

The CHAIRMAN. And from that down to 10 miles an hour?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. But the rate of 10 miles an hour could be maintained with safety in your judgment?

Mr. LINCOLN. It could where there is not a congestion of trains.

The CHAIRMAN. Whenever there is a congestion on the line somebody has blundered, isn't that true?

Mr. LINCOLN. Not always; no, sir. The congestion is caused by the heavy movement of freight, and the congestion at terminals is caused by not getting cars unloaded and released after getting them to destination.

The CHAIRMAN. Will you please define the word "released" as you use it there?

Mr. LINCOLN. The word "released," as I use it, is getting freight unloaded from the cars.

The CHAIRMAN. You may proceed in your own way.

Mr. LINCOLN. You were asking about the average number of miles per car per day. Of course, I am only speaking from the Union Pacific Railroad standpoint. Our cars on our own line average from 32 to 34 miles a day all the year round.

Mr. TOWNSEND. Before you leave that other subject, when you start a freight train out from any terminal or any point of shipment, is it your custom to switch that along on different sidings for the purpose of making way for other classes of freight, or for the purpose of getting extra cars to put into that particular train?

Mr. LINCOLN. The purpose is, when we start a freight train out of a district terminal it will be either a through freight train or a local freight train. The through freight train will not stop between the different terminals, but runs right through.

Mr. TOWNSEND. What constitutes a through freight train?

Mr. LINCOLN. For example, we will start a train out of Council Bluffs with California freight in it. That is a through freight train, and the only stops it makes is at district terminals, outside of the stops for orders. It does no work between district terminals. The local freight train is one that stops at all stations switching and setting out cars and picking up cars. They would pick up cars and take them to the next district terminal for the through freight train to pick up at that terminal.

Mr. TOWNSEND. Do you handle live-stock cars in that way.

Mr. LINCOLN. It is according to how many cars are wanted for loading. If they wanted to load 15 or 20 cars of stock, then we will send a train to pick them up.

Mr. TOWNSEND. Do 15 or 20 cars of stock constitute a train load?

Mr. LINCOLN. No, sir; 30 cars.

The CHAIRMAN. If you get 15 or 20 cars of live stock, how do you handle that?

Mr. LINCOLN. We would send a train to the loading station and load the stock for the shippers, trying to move enough cars on that train to make a full train out of the loading station. If not, we will pick up enough cars at the next district terminal to make a full train and run right along with them.

Mr. TOWNSEND. Your aim is to employ the full power of your engines in hauling trains?

Mr. LINCOLN. Yes, sir.

Mr. TOWNSEND. So that they will run pretty close up to their capacity all the time?

Mr. LINCOLN. Yes, excepting on stock; for instance, we can handle on our Wyoming division 1,300 tons to the engine, but on stock we only limit it to 30 cars, which would average about a thousand tons.

Mr. TOWNSEND. I suppose your company has considered the proposition as to whether it is more profitable for them to handle the freight quickly, though sometimes loaded light, as we say, and return again, as compared with the proposition of waiting until they get the 13,000 tons in a train.

Mr. LINCOLN. That has been considered and it is used sometimes. The superintendents have instructions to use their own judgment. As I say, for the past two years we have always had the tonnage at the district terminals to fill those trains up. We did not have before; we were waiting for engines.

Mr. TOWNSEND. There has been a great deal of complaint before this committee and through the mails—I take it the rest of the committee have had the same experience that I have had in that respect—that what they are pleased to term the “tonnage system” has worked serious injury to the shipper, especially regarding live stock; that they have been obliged to have their stock switched on the sidings and held an unconscionably long time in order to get some more cars to put in that train. That is one of the most serious things that they have complained of.

Mr. LINCOLN. I think their complaint is proper on some railroads, from what I hear; but on the majority of roads I think that they handle the stock business to the best of their ability and to the best advantage of the stock.

Mr. TOWNSEND. This bill would not affect you, would it?

Mr. LINCOLN. The bill would naturally affect us the same as any other road, for we may sometimes get caught; for instance, that part in regard to the free interchange of cars. In fact, they want the railroads to furnish their connections cars to move the stock off the connecting lines, while possibly the road which has to furnish the cars has more orders for cars on its own lines than it can possibly take care of. That is where it would affect our road.

Mr. TOWNSEND. That has impressed me in the same way that it has you. I could not quite understand how that could be brought

about, and therefore I have been quite inclined to the notion that if we could provide some way by law, or under the discretion of the Commission, whereby rules could be adopted governing the return of cars, at least that they shall be sent back in the direction of their ownership, that possibly we might overcome this difficulty. I would like your opinion about that. I may be entirely wrong about it.

Mr. LINCOLN. That would pretty nearly overcome the shortage of cars in some districts, but the railroads under the American Railroad Association have that matter in hand, as to a way of having the cars returned.

Mr. TOWNSEND. Will the plan be adopted?

Mr. LINCOLN. They are still working on it.

Mr. MANN. Mr. Lincoln, in your paper do you discuss the question of handling empties?

Mr. LINCOLN. No, sir.

Mr. MANN. I wish very much that some expert railroad man like yourself would explain fully to our committee, either orally or through a written statement, just how you aim to handle empty cars. I do not wish to detain you now, but you might send us a written statement.

Mr. LINCOLN. I am here to give information to the committee. Take, for instance, stock cars in the heavy movement of stock; we handle those cars in train-load lots just as quickly as they are released at the stock yards, and, in fact, we bring trains of stock into South Omaha or Kansas City, unload them in the early morning, and try to make the market by 3 or 4 o'clock in the morning, and we will have practically all of those stock cars moving back west by noon.

The CHAIRMAN. Would those be your cars, or, suppose they were cars of another line?

Mr. LINCOLN. They would be practically all our own cars.

The CHAIRMAN. What would you do with the stock cars that belonged to a line east of you?

Mr. LINCOLN. We would turn them over to the owning line at the yards.

The CHAIRMAN. Would you do that now in cases where you needed the cars on your own line?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. Invariably?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. Is that the rule?

Mr. LINCOLN. That is the rule; that is, unless we have permission from the owning line to use the cars.

Mr. TOWNSEND. But that is not the rule with the roads generally?

Mr. LINCOLN. It was not the rule six months ago.

The CHAIRMAN. Is that rule of recent date? What would they have done six months ago when there was a great demand for cars? Would you have moved them back west or delivered them to the road across the river?

Mr. LINCOLN. I would have delivered them to the owning line, because we have arrangements with them to have cars at terminals, more especially stock cars. We furnish more cars for stock to go east than the connecting lines send to our own lines.

The CHAIRMAN. Suppose when you had delivered, we will say, to the Burlington road at Omaha 30 stock cars, at the time when

you have no great demand for them, what would have been the effect upon your road if they had been compelled to deliver to you on that same day an equal number of stock cars that perhaps you did not want? Suppose you delivered your cars loaded to them; what effect would that have had upon your road; would it have been beneficial or otherwise?

Mr. LINCOLN. At the present time it would not be beneficial, but in the fall of the year when the stock is moving heavy it would be a benefit to the road; but at the same time you must take into consideration that the Burlington and the other connections are giving us cars to take out on the road and load back to them. As I say we give them more of our cars than they give us of theirs.

Mr. MANN. Is that true all the time, that you give them more of your cars than they give you back?

Mr. LINCOLN. That is true of the stock shipments, but not anything else. They give us more box cars than we give them.

Mr. MANN. Are stock cars used for any other purpose?

Mr. LINCOLN. We use stock cars to handle rails, ties, and the low commodities of freight. During the stock season we use them to handle company material and rails in the direction which they will have to move empty, that is we save the empty haul, at the same time getting the car to destination promptly with our material. When the stock season is over—we only have two seasons there, in the fall and in the spring—we put the cars in the coal trade.

Mr. TOWNSEND. If that rule were followed invariable, returning cars under the rule which you say exists between you and the connecting lines, and if the cars from one road were returned to that road or in its direction within a reasonable time, do you think we would have much complaint about car shortage?

Mr. LINCOLN. Well, not if they were returned in a reasonable time. You must take into consideration that the volume of business that the railroads have had to handle in the past few years has been more than they could take care of.

Mr. KENNEDY. That has been a limited shortage?

Mr. LINCOLN. There has always been a limited shortage, and there has been a shortage of the receiver not having capacity or facilities for unloading cars promptly.

Mr. KENNEDY. Does your road pay a mileage rental for cars to any other road whose cars travel over your line?

Mr. LINCOLN. We pay the per diem.

Mr. KENNEDY. And that per diem you pay from the time the car gets on your road until you deliver it back or until the road gets it?

Mr. LINCOLN. We pay per diem until the time the car is received by its line or delivered to some other line.

Mr. KENNEDY. So that the car is supposed to earn a rental for its use while it is out of possession of the owning company?

Mr. LINCOLN. Yes; every day.

The CHAIRMAN. What is that per diem?

Mr. LINCOLN. Since the 1st of March, 25 cents a day.

Mr. KENNEDY. That is based upon the idea that it is impracticable for each road to do business with its own cars, and that you have to exchange cars?

Mr. LINCOLN. It is based upon the idea that in the exchange of cars with one another there is a reciprocal arrangement made as to what the rental of the car will be.

Mr. HUBBARD. Is that purely a rental, or in the nature of a penalty tending to compel the return of the car?

Mr. LINCOLN. It is a rental.

Mr. TOWNSEND. Why was it reduced to 25 cents?

Mr. LINCOLN. Well, a majority of the railroads thought that 50 cents was entirely too high.

Mr. HUBBARD. Fifty cents would have operated to require the return of the cars; that would have been a sort of a penalty, would it not, at the time you fixed it at 25 cents?

Mr. LINCOLN. The rate was 50 cents prior to the 1st of March.

Mr. MANN. Fifty cents was a rental of \$175 a year on a car worth how much—\$800, \$1,000, or \$1,200?

Mr. LINCOLN. At present they are paying \$800 to \$1,200 for a large box car.

Mr. MANN. Then that was a rental of 15 to 20 per cent?

Mr. LINCOLN. Yes, sir. The rental was raised to 50 cents, more as a penalty than as a rental of cars.

Mr. HUBBARD. If the railroads really wanted the cars returned, why did they not preserve that amount, which would have been a penalty all the time?

Mr. LINCOLN. Because, since the business has fallen off materially, it has caused an unusual empty movement of equipment to get the foreign cars off the line and save the enormous expense of paying out 50 cents a day on cars; in other words, take a railroad that had 10,000 cars on a line, that would amount to \$5,000 per diem.

Mr. HUBBARD. When the demand for cars is great, is that amount fixed at what would constitute a penalty, or simply on the rental basis?

Mr. LINCOLN. On the rental basis.

Mr. HUBBARD. So that even when the roads are in need of cars they do not provide anything in the nature of a penalty that would compel the return of the cars?

Mr. LINCOLN. In answer to that I would have to go back, on this rental of cars or per diem basis: The rental of cars years ago, not very many years ago, was on a mileage basis. We paid 6 mills per mile for every mile the car ran, and if it did not run they did not pay for it. Then they adopted the per diem basis of 20 cents a day with a penalty of 80 cents after ten days' notice. If a car was on the line twenty days perhaps they would charge that. Then they arranged for 25 cents, with a 75-cent penalty. Then they did away with the penalty and raised it to 50 cents straight.

Mr. HUBBARD. Why did they do away with the penalty feature?

Mr. LINCOLN. Because they doubled the rate of per diem, from 25 cents to 50 cents a day straight. Since there has been a large surplus of cars with the extraordinary empty movement to get the foreign cars home, they have reduced the rate to 25 cents a day with no penalty clause.

The CHAIRMAN. Where has been the balance in your account, for moneys paid or received, for use of cars on your road?

Mr. LINCOLN. For the past two years it has been against us.

The CHAIRMAN. About how much?

Mr. LINCOLN. Well, I would not want to say because I do not know what the figures are, but it has been very large.

The CHAIRMAN. Very large?

Mr. LINCOLN. Yes.

Mr. KENNEDY. It is nearly always in favor of the terminal line where a great deal of freight originates, and against the long line, isn't it?

Mr. LINCOLN. It is in favor of the terminal line where the freight originates, and who have the equipment to take the freight, and against the line which delivers the freight, on account of inability to get cars unloaded to move them back.

Mr. TOWNSEND. Were you present at the meeting something like a year ago of the American Railway Association that discussed this question of car shortage, and tried to get some general rule adopted for the return of cars?

Mr. LINCOLN. No, sir.

Mr. TOWNSEND. Do you know that there was complaint made at that time against certain of the great trunk lines, that they had very insufficient car equipage?

Mr. LINCOLN. No, sir; I don't know.

Mr. MANN. Would it be possible for a Union Pacific car to be picked up by the Northwestern line in Wisconsin?

Mr. LINCOLN. Yes, sir.

Mr. MANN. What would become of that car?

Mr. LINCOLN. The prospects would be very favorable for the Northwestern loading that car for some Wisconsin point.

Mr. MANN. If it was at some station, and they wanted to put a load on it at that station, would they use it for that purpose?

Mr. LINCOLN. According to which way it went. If it went east to the seaboard, I do not think they would use it because they have more loading for the west by the way of the Union Pacific than they have Union Pacific cars for, so they naturally would rather furnish one of our cars than furnish one of their own when there is a shortage of cars.

Mr. MANN. If it laid on that road for any time, they would pay the per diem for the use of the car, although lying there empty?

Mr. LINCOLN. Yes; pay the regular per diem rate for the use of the car while on their line.

Mr. MANN. Even if it were on the side track to be unloaded?

Mr. LINCOLN. Yes, sir.

Mr. MANN. Even although it had run over their line only 10 or 12 miles; it would not make any difference?

Mr. LINCOLN. No difference.

Mr. MANN. As soon as it passes into their hands they are charged a per diem.

Mr. LINCOLN. If the car was on the line past the hour of midnight, they would pay 25 cents a day for it even if they had it only twenty minutes.

Mr. RYAN. For every foreign car on the road?

Mr. LINCOLN. Yes, sir.

Mr. KENNEDY. If the car was destroyed by fire, they would have to pay 25 cents per day until they reported the loss?

Mr. LINCOLN. Yes, sir.

Mr. TOWNSEND. What objection have you to offer to the proposition allowing the Interstate Commerce Commission to fix reasonable terms upon which cars shall be returned or handled?

Mr. LINCOLN. Well, I do not know that I have any objection. Of course they would have to go at it by getting some experts in that

line to give them the figures as to what it costs to keep cars in repair, and to what is the proper territory for the use of that car. That kind of a committee has been appointed by the president of the American Railway Association to get the information so as to make a rate for the use of cars between railroads. This 25-cent rate is only temporary.

Mr. TOWNSEND. But the American Railway Association had not been able to agree on account of the great difference of opinion between the representatives of the roads which have sufficient equipment and the representatives of the roads which have not sufficient equipment.

Mr. LINCOLN. No; that has nothing to do with the rental of the car.

Mr. TOWNSEND. I did not want to be understood as referring to the fixing of a rental, but as to fixing terms upon which they shall be returned. I mean by that to include something more than fixing the penalty for the keeping of the car, but fixing rules upon which they shall return the cars in the direction of the owning company.

Mr. LINCOLN. They have that under consideration now.

Mr. HUBBARD. Have they any rules now?

Mr. LINCOLN. Yes; they have rules.

Mr. RICHARDSON. Don't you think, as a railroad man and from the standpoint of common sense and self interest, that it is their desire and earnest effort, because it is to their profit and advantage, to keep every car in use that it has?

Mr. LINCOLN. That is the desire of the Union Pacific Railroad, I know; and I have no doubt it is the same desire of all the other railroads where they make their earnings on the movement of cars.

Mr. RICHARDSON. Isn't it to their money interest?

Mr. LINCOLN. That is where they make the earnings.

Mr. RICHARDSON. Isn't it to their interest to look after these cars that straggle off and stray away to other roads and to get them back to their own trunk line as quick as possible for the transportation of their freight and the service of their own patrons?

Mr. HUBBARD. Does not that depend upon the question as to whether some road may have more cars of other roads than the other roads have of their cars?

Mr. MANN. Just at present it is to their interest to keep them off of the other lines, is it not?

Mr. LINCOLN. That is right.

Mr. RICHARDSON. I am arguing in regard to the incentive that operates upon all men to make all the money they can with the facilities that they have. Railroads do that, do they not?

Mr. LINCOLN. They try to.

Mr. KENNEDY. You spoke of the manner of your road returning cars to another road. Would it do any harm if we provided by law that all roads should practically do the same thing that you said your road would do as to the returning of cars?

Mr. LINCOLN. I can not say that it would do any harm.

Mr. KENNEDY. If every road did that, might it not prevent embarrassment oftentimes of a road and facilitate the movement of freight?

Mr. LINCOLN. It might prevent embarrassment; no doubt it would.

Mr. HUBBARD. It would depend, would it not, on the penalty that was inserted in the law as to its enforcement; and what sort of a penalty could be put in such a law?

Mr. LINCOLN. I would not want to say.

Mr. HUBBARD. Could you apply it in any other way than the way in which you have applied it in times past?

Mr. LINCOLN. That is the only penalty I could think of right now; the penalty for the return of the cars.

Mr. KENNEDY. Naturally, if they loaded a car after the car was unloaded—loaded it and consigned it away off in another direction away from the home road—that might be punished in another way other than by a per diem on the car.

Mr. WANGER. Is any attempt made by the railroad owning the cars to control their movement when they go upon other lines?

Mr. LINCOLN. There has been an attempt to control it, but it was not very well controlled.

Mr. WANGER. The statement was made here that in the Pecos Valley country the live-stock people give notice to the Burlington system of their desire to ship large consignments of live stock, that the Burlington furnished the necessary cars, but that the Pecos Valley line diverted them for other purposes, with the result that the live stock could not be shipped in proper season. Is it the custom of railroads to make any special attempt to control the use of cars so furnished?

Mr. LINCOLN. It is the custom that when cars are furnished that they will be applied on that business.

Mr. WANGER. That is for the receiving company to use them for the purposes for which they have been sent?

Mr. LINCOLN. Yes, sir.

Mr. WANGER. Is that rule broken, or observed generally?

Mr. LINCOLN. Observed generally.

Mr. WANGER. The statement was also made that the movement of live stock was less frequent and less expeditious in recent years than several years ago. What knowledge have you as to that?

Mr. LINCOLN. The movement of live stock has been a little slower the last two years than it was before.

Mr. WANGER. Has not the chief effort of the railroad companies been to minimize the cost of shipments rather than to expedite their movements?

Mr. LINCOLN. Well, it would be on the other classes of freight, but on stock, on account of the heavy movement of freight and the increased amount of business done, it makes it impossible to make the same schedule that they did three or four years ago when they had three trains on the road. At the present time they move ten or fifteen at the same time, and that has been the cause of the slowing down of stock movement.

Mr. WANGER. That is more of a desire to have large trains and not so many of them?

Mr. LINCOLN. Yes. Take our own lines, for instance, as I say, in Wyoming we only handle 30 cars of stock to a train, while with dead freight we will handle 45. In Nebraska, where it is water grade, we put the limit at 45 stock cars to a train, but we will handle 60 to 65 cars. But we are not making the same average schedule per day

that we did three years ago, because we had more business on the line, more trains to meet, and it is impossible to get over the lines as quick as when we did not have so many trains.

Mr. RUSSELL. Does the increase of tonnage per train have any effect upon the schedules?

Mr. LINCOLN. Excepting as I say, on account of the increased business.

Mr. RUSSELL. Is that the only factor that has entered into the lessening of schedules?

Mr. LINCOLN. Yes, sir.

Mr. WANGER. The increased tonnage has been more than met by the increased power of locomotives, has it not?

Mr. LINCOLN. It has; yes. Going back to five years ago, we had smaller power, but we would handle about 25 cars of stock at that time with that power and make faster time. But we have more trains now. We had four passenger trains, two each way a day, while now we have about fifteen.

Mr. WANGER. Does not that suggest the construction of additional trackage?

Mr. LINCOLN. It does, and we are building double track as fast as we can. We built over 300 miles of double track last year. We have 100 miles contemplated for this year.

Mr. WANGER. That is, out of how many miles of single track does this 100 miles contemplate?

Mr. LINCOLN. The double track is on the main line from Council Bluffs to Ogden. We have a thousand miles of single track there, and the 300 miles of double track is on that line.

Mr. WANGER. And the proposition for this year is to double track one-tenth of the amount of single track?

Mr. LINCOLN. Yes, sir. The railroads will be in better shape in the next six months to handle any business which may be offered than they have been in the two years, because they have not had an opportunity to ship all their power and put it into condition.

Mr. MANN. Again speaking of the empties, I suppose there are certain seasons when certain freight is moved, freight that is not moved extensively at other seasons. When do you ship most of the stock on your road?

Mr. LINCOLN. Most of the stock is shipped from the latter part of August up to the latter part of November.

Mr. MANN. Do you have a special season for handling the California oranges?

Mr. LINCOLN. The California oranges start east by our line some time this month; and then the deciduous fruit about the 1st of May, and that moves up to October.

Mr. MANN. Do you handle much wheat?

Mr. LINCOLN. Our wheat is in Kansas; mostly, and that moves during the winter months. They have a spasmodic movement down there in August and September, then holding up a little while, and moving again in November and December.

Mr. MANN. Do you handle much corn?

Mr. LINCOLN. Yes; according to the market.

Mr. MANN. You expect to provide equipment for the special seasons, I suppose?

Mr. LINCOLN. Yes.

Mr. MANN. If you would, under the law, exchange cars at terminals under the mere exchange of cars, would that supply you with your equipment for handling these services at special times?

Mr. LINCOLN. No; I do not think it would supply us with enough equipment to take care of the business just at that time.

Mr. MANN. Does the movement of cars vary in the different sections of the country with respect to certain kinds of cars at different times, such as refrigerator cars?

Mr. LINCOLN. It may, by taking in the whole country, but not one district.

Mr. MANN. I mean the whole country.

Mr. LINCOLN. Yes, sir.

Mr. MANN. How does a road manage to get the empty cars to take care of the special demand that it knows will occur at certain seasons?

Mr. LINCOLN. They make requisition on their connections for a certain number of cars to move the business by their line.

Mr. MANN. Do they store those cars up on their own line?

Mr. LINCOLN. They do not take the cars until the business commences to move, and they naturally put their own cars in the service at the same time.

Mr. MANN. Knowing that a certain movement of wheat will occur at a certain season and will require a large number of cars, how do you arrange to furnish those cars?

Mr. LINCOLN. Most of the wheat that moves in Kansas goes into elevators at Kansas City, and we try to get a large number of our own cars in that territory and stop the foreign cars coming from the west in that territory and give them a load to the Missouri River.

Mr. MANN. Do you sidetrack those cars for a while and hold them?

Mr. LINCOLN. Yes.

Mr. MANN. Then you commence preparing in advance for this car service?

Mr. LINCOLN. We commence with the wheat about ten days in advance.

Mr. HUBBARD. Do you ask for cars from connecting roads?

Mr. LINCOLN. We do.

Mr. HUBBARD. What provision do you make, or could you make, for furnishing your cars in exchange at the time you receive them from the connecting road?

Mr. LINCOLN. We could not furnish them any cars, on account of the heavy movement of grain on our own line.

Mr. HUBBARD. If you were required to exchange cars, that would prevent your getting other connecting lines to contribute to your needs at that time?

Mr. LINCOLN. Yes, sir.

Mr. MANN. Do your connecting lines want these same cars at the same time of the year for the same purposes?

Mr. LINCOLN. Some of them will, but with the majority of them the season might be a little bit later.

Mr. MANN. Does wheat move shortly after it is harvested?

Mr. LINCOLN. In Kansas, yes, sir.

Mr. MANN. How is it as to the rest of the country?

Mr. LINCOLN. In Nebraska it does not move as quick; that is, the harvest in Nebraska is about three weeks behind Kansas.

Mr. MANN. As to the railroads running from the southern portion north, do they make an effort to provide cars for this wheat crop which matures in the South earlier and in the North later, so as to take care of the movements of wheat in its season?

Mr. LINCOLN. Yes; they make the effort.

Mr. MANN. Could that be done by a mere interchange of cars at the terminals, a mere exchange even, getting the same number that you give?

Mr. LINCOLN. No; for the reason that most of that wheat goes into elevators at the Missouri River.

Mr. RUSSELL. How long did the car shortage complained of exist?

Mr. LINCOLN. Not over two years.

Mr. RUSSELL. You stated a while ago that you thought that the delay caused by these two features, failure of cars to be promptly released and inability of the railroad companies to secure them from the factories—what effort did your road make during the existence of the complaint to meet the extraordinary conditions growing out of the unusual amount of traffic as to the supplying of locomotives and cars?

Mr. LINCOLN. We got 120 new locomotives within the past year and a half and about 5,000 cars.

Mr. RUSSELL. You got that many?

Mr. LINCOLN. Yes.

Mr. RUSSELL. Did you order more than you got?

Mr. LINCOLN. Yes.

Mr. RUSSELL. That is, more than you could obtain?

Mr. LINCOLN. Yes.

Mr. RUSSELL. Was that on account of the extraordinary conditions existing at that time?

Mr. LINCOLN. It was on account of the business increasing at all times; we could see it, noticed it, and wanted to be prepared for it.

Mr. HUBBARD. Do you mean that you ordered before the need was actually upon you?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. What would have been the effect upon the car shortage during the early part of this past year if other roads had promptly returned the cars that they received and that belonged to another road? Would the procedure have made any difference?

Mr. LINCOLN. It may have made a slight difference, but it would have been nearly impossible to have done it.

The CHAIRMAN. Suppose that they had done it without any reference to those cars, by detaining them a day or two for return, and returning the car promptly as soon as it was empty; suppose every road had busied itself to return cars that belonged to another road, what would have been the effect of that upon the moving of the great volume of trade? Would the movement have been less or greater?

Mr. LINCOLN. The movement I do not think would have been any greater, for it was a question of power to move the freight.

Mr. RUSSELL. Do you mean by power the lack of locomotives?

Mr. LINCOLN. Yes, sir.

Mr. HUBBARD. You spoke of additional locomotives. How do the locomotives among the 120 that you have received compare in the power with the equipment you had before that time?

Mr. LINCOLN. They are about the same, though they may be a little heavier.

Mr. HUBBARD. But about the same, for the most part?

Mr. LINCOLN. Yes, sir.

Mr. RICHARDSON. Did I understand you to say that if the law had required the return of all the cars promptly that it would have been impracticable to have complied with that law?

Mr. LINCOLN. Yes, sir.

Mr. RICHARDSON. Why?

Mr. LINCOLN. Because the road did not have the power to move the business and return the cars promptly.

Mr. RICHARDSON. Do you mean that with the power the common carriers had they could not have complied with that law because it would have been impracticable?

Mr. LINCOLN. Not at that time.

The CHAIRMAN. How many additional engines would you have had to have upon your road at that period a year ago to promptly move all of your freight?

Mr. HUBBARD. And to also return all cars?

Mr. LINCOLN. I can not give you an answer to that.

The CHAIRMAN. Well, approximately.

Mr. LINCOLN. Because the trackage cuts a large figure.

The CHAIRMAN. But you have imputed the failure to lack of power.

Mr. LINCOLN. It was a lack of power and also of trackage; but we did not have the power to move all freight.

Mr. HUBBARD. On the same trackage would additional power have done the work?

Mr. LINCOLN. Not all of it. We are still short some trackage.

The CHAIRMAN. Aside from this matter of trackage, how many locomotives would you have needed additional?

Mr. LINCOLN. I don't know as we would have needed any more after we got this 120 that was ordered last year.

The CHAIRMAN. As to that 120, was that a net gain of locomotives?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. As to the 5,000 cars, was that a net gain?

Mr. LINCOLN. Practically net gain.

The CHAIRMAN. You suffered no losses from old cars?

Mr. LINCOLN. Very few, though of course there are old cars broken up every day.

The CHAIRMAN. What does a locomotive of the character that you purchased cost?

Mr. LINCOLN. I would not like to be quoted, for I do not know, but I believe it is between \$15,000 and \$18,000.

The CHAIRMAN. How large are they—how many tons?

Mr. LINCOLN. They weigh about 220,000 pounds.

Mr. KENNEDY. It takes a much longer time to build a locomotive than a car, and your lack of cars could be remedied much quicker than the lack of locomotives?

Mr. LINCOLN. It takes longer to get them. We are just getting some of them now; that is, the last of them is being completed now.

Mr. RYAN. Is the question of insufficient trackage as important as that of lack of power on your road?

Mr. LINCOLN. Yes; if we have more power we have more trackage. The CHAIRMAN. When you speak of trackage do you mean the main tracks or the terminals?

Mr. LINCOLN. I mean the main track, double track, and side track.

Mr. RICHARDSON. What additional trackage or mileage on your line is necessary to comply with all of the demands for the transportation of freight?

Mr. LINCOLN. We are taking care of it now very nicely.

Mr. RICHARDSON. How do your net receipts now compare with several months ago?

Mr. LINCOLN. I think they are about 25 per cent off.

Mr. RICHARDSON. What do you attribute that to?

Mr. LINCOLN. It is pretty hard to say, excepting a decrease in business, and as to the cause of the decrease in business I do not know. But there is a decrease in our through business. Our local business is holding up very nicely.

Mr. RICHARDSON. Have you been taking off some of your trains?

Mr. LINCOLN. We have not been taking off any trains excepting upon a few branch lines where trains were made to run every other day instead of every day. But no main-line trains have been taken off.

Mr. RICHARDSON. What did you take those branch-line trains off for?

Mr. LINCOLN. Because business had fallen off a little.

Mr. RICHARDSON. Losing money?

Mr. LINCOLN. To cut down expenses. Of course, as to the main line, we are running the same number of freight trains that we did six months ago. We have laid off some trainmen and enginemen, but no trains have been taken off. They are all extra trains, the freight trains. No trains have been taken off the time card.

Mr. RICHARDSON. You have not given any reasons as to what you believe is the cause of the decrease of receipts as compared with last year.

Mr. LINCOLN. The cause of the decrease of receipts with us was on account of the through business, both east and west bound, falling off. The local business shows a small increase. The heavy decrease is on the through business.

Mr. RICHARDSON. You know, do you not, that the railroads engaged in the last two or three years in rebating?

Mr. LINCOLN. I do not know anything about rebates.

Mr. RICHARDSON. You do not know of that?

Mr. LINCOLN. No, sir.

Mr. RICHARDSON. That was generally understood here, that railroads had been engaged in rebating some years back, and acknowledged by most of the presidents of the railroads, and they wanted a drastic law passed to prevent it. We did pass that kind of a law, and it is enforced now, aiming at rebates as the chief evil that the public had a right to complain of. What is your opinion of that? Did that evil decrease, or does it exist now at all?

Mr. LINCOLN. I do not think it exists now at all, but there is a clause in this bill which would legitimatize rebating.

Mr. RICHARDSON. What clause is that?

Mr. LINCOLN. Where you give a road three days to furnish less than 5 cars; five days to furnish 5 to 10 cars, and eight days to fur-

nish over 10 cars, and give the shipper the leave to sue for damages. The railroad would furnish the cars, and it would be a legitimate rebate.

Mr. WANGER. That is, that provision would give an advantage to a small shipper who only required a few cars against a large one who required many cars.

Mr. LINCOLN. A large shipper may order a large number of cars and not use them and bring suit for damages, saying that the market had gone off and he did not want them. It would be the same way in ordering cars for stock, fining a railroad for not furnishing the cars, but if they furnished the cars and hauled them 100 miles or over, the market goes off, and Mr. Stockman gets a telegram from the commission house telling him not to ship, what is the railroad going to do? They do not use the cars, so they have to haul them back again.

Mr. RUSSELL. The only way I can see that the law could be taken advantage of in the concealment of a rebate would be for the railroad company not to furnish the cars and let the man recover the rebate and the cost of the suit for damages?

Mr. LINCOLN. That is the way it would be done to do it legally.

I believe that is all I have, gentlemen, and I am very much obliged to the committee for its attention.

Adjourned at 12 o'clock to meet again at half-past 1 p. m.

NO. 886.—AMERICAN NATIONAL LIVE STOCK ASSOCIATION AND CATTLE RAISERS' ASSOCIATION OF TEXAS v. TEXAS AND PACIFIC COMPANY ET AL.

[Submitted February 20, 1907. Decided March 7, 1907.]

Prior to April, 1904, the Texas and Pacific Railway Company had in effect with various lines of railway, including the other defendants, joint tariffs, I. C. C. No. 1015, I. C. C. No. 1038, and I. C. C. No. 1036, applying on live stock from points on its line in Texas and New Mexico to destinations therein specified, but during that month the Texas and Pacific Railway Company canceled such joint tariffs, and since that time no through routes or joint rates applicable to live stock to and from points on its line have been in force. *Held:* That the public interest requires the establishment of the through routes and joint rates provided for in such joint tariffs, with leave to any party to apply for a modification of the order which may be issued herein at any time, but that formal order herein be withheld for thirty days. The carriers are granted authority to establish such joint tariffs upon ten days' notice to the public and the Commission.

S. H. Cowan for complainants.

T. J. Freeman for Texas and Pacific Railway Company.

M. A. Low and E. B. Peirce for Chicago, Rock Island and Gulf Railway Company; Chicago, Rock Island and Pacific Railway Company, and St. Louis and San Francisco Railroad Company.

M. A. Spoons for Fort Worth and Denver City Railway Company.

A. H. Culwell for Atchison, Topeka and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This petition is brought by the American National Live Stock Association and the Cattle Raisers' Association of Texas against—

The Texas and Pacific Railway Company;

The Gulf, Colorado and Santa Fe Railway Company;

The Atchison, Topeka and Santa Fe Railway Company;

The Missouri, Kansas and Texas Railway Company of Texas;
 The Missouri, Kansas and Texas Railway Company;
 The Chicago, Rock Island and Gulf Railway Company;
 The Chicago, Rock Island and Pacific Railway Company;
 The St. Louis and San Francisco Railroad Company;
 The St. Louis, Iron Mountain and Southern Railway Company;
 The Fort Worth and Denver City Railway Company; and
 The Southern Pacific Company.

The purpose of the proceeding is to compel the defendants to establish through routes and joint rates for the transportation of live stock to and from points upon the Texas and Pacific Railway over the line of that railway in connection with the lines of the other defendants. The competency of the complainants to maintain this action and the jurisdiction of the Commission over the defendants are admitted.

Previous to April, 1904, the Texas and Pacific Railway Company had in effect with various lines of railway, including the defendants, the following joint tariffs for the movement of live stock:

"I. C. C. No. 1015, applying on live stock from Texas points to the principal markets, like Kansas City, St. Louis, and Chicago.

"I. C. C. No. 1038, applying on range and stock cattle from Texas and New Mexico points to the ranges in Montana, Nebraska, Wyoming, etc.

"I. C. C. No. 1036, applying on stock cattle shipped from points in Texas and New Mexico to points in Kansas, Colorado, etc."

During the month of April, 1904, these joint tariffs were all canceled by the Texas and Pacific, since which time there have been no through routes or joint rates applicable to the movement of live stock to and from points upon its lines. The claim of the complainants seems to be that the Texas and Pacific should reestablish, in the main, the joint rates which were in effect under these tariffs.

The line of the Texas and Pacific Railway Company extends from El Paso upon the west in a general easterly direction to Texarkana and New Orleans upon the east. The points of connection with other railways especially embraced in this proceeding are Texarkana, Fort Worth, Pecos, and El Paso.

No testimony was introduced as to conditions at Texarkana. It appeared that at El Paso and Pecos great inconvenience had resulted to shippers of live stock, who found it necessary to ship through these junctions to and from points upon the Texas and Pacific. In order to make such shipment through Pecos, for example (and the same would apply to El Paso), it was necessary for the shipper upon the Texas and Pacific to arrange with that company for the movement of his stock upon a certain date and also to arrange with the Pecos Valley lines, a part of the Santa Fe system, connecting with the Texas and Pacific at Pecos, to have ready at that point at the proper time the necessary cars to receive and forward the stock. This it was often difficult to do. Delay was occasioned and the animals were injured by the transfer from car to car. Generally speaking, the inability to make through shipments had inflicted hardship and loss upon shippers and seriously interfered with the free movement of live stock through these junction points.

At Fort Worth conditions were less burdensome to the shipper. Several competing lines are available from that point to destination, and these lines are apparently anxious to move the business, so that the shipper had usually little difficulty in obtaining cars for the movement of his stock whenever it reached Fort Worth, it only being necessary to notify the lines by which he desired to ship that the shipment would be made from a certain point upon the Texas and Pacific at a certain date. It also appeared that shipments from Texas points through Fort Worth were allowed the privilege of trying the Fort Worth market—that is, of being unloaded, put on sale, and afterwards, if no sale were effected, reloaded and sent on at the through rate from the point of origin to destination. In this event no inconvenience was experienced by being compelled to transfer the stock to new equipment, since it must be in any event unloaded and reloaded. But it was said that, for certain reasons which need not be stated, many shippers did not wish to avail themselves of this privilege at Fort Worth, in which event an unnecessary delay of at least twelve hours was occasioned by the transfer at this point, unless shipment from Fort Worth were made by the Missouri, Kansas and Texas, which had provided pens separate from the stock yards, at which shipments were delivered by the Texas and Pacific and where transfer could be promptly made from car to car.

The testimony plainly established that the refusal of the Texas and Pacific to continue these joint rates did, by putting upon the shipper the burden of providing for the transfer of his stock at the junction point, occasion annoyance, delay, expense, and loss to the shipping public.

The only excuse put forward by the Texas and Pacific for its action in withdrawing these joint rates and its present refusal to reestablish them was that it could not allow its equipment to pass off its own line into the possession of its connections. It asserted that in times of heavy movement these cars were not promptly returned; that it could not obtain from its connections a corresponding number of stock cars, and that as a result it was left without equipment necessary to handle its local business, and thereby subjected itself to heavy penalties under the statutes of the State of Texas and also to actions in damages for failure to promptly move the live stock presented to it for shipment. It was for the purpose of confining its equipment to its own rails, so that it might be able to handle the business offered, that the action was taken.

It was stated upon the trial and is repeated in the brief for the Texas and Pacific that this company has no objection to a reestablishment of the through routes and the joint rates, provided it can be protected in the use of its cars. The other defendants have all stated, either in their answers or upon the hearing, that they have no objection to a reestablishment of these joint schedules.

We are clearly of the opinion that the public interest requires the establishment of through routes and joint rates for the movement of this commodity to and from points upon the line of the Texas and Pacific Railway to substantially the same effect that these routes and rates had been voluntarily agreed upon previous to their cancellation by that company. The doubtful question is whether this Commission has authority as a part of its order for the establishment of such routes and rates to require the interchange of cars between the Texas and Pacific and its connections. The complainants insist that the Commission has such authority and should exercise it in this case. The defendants deny the existence of such authority.

The first section of the act makes it the duty of carriers subject to its jurisdiction "to establish through routes and just and reasonable rates applicable thereto." The fifteenth section of the amended act provides that the Commission may, after hearing on complaint, establish through routes and joint rates and may prescribe "the terms and conditions under which such through routes shall be operated." It also confers upon the Commission authority to correct a regulation or practice if found unlawful. It is under these provisions, if at all, that our right to direct an interchange of equipment arises.

It does not seem necessary to decide this question in the present proceeding, for, assuming that the Commission has authority to make such an order, we should hesitate to do so upon the facts before us. It would clearly be unjust to the Texas and Pacific to order it to deliver its cars to its connections unless we could at the same time make some order compelling those connections to return a corresponding number of cars to the Texas and Pacific, or at least to share in the burden of providing the necessary equipment for the through transportation of this traffic. Nor is it certain that such an order, if made and executed, would be in the interest of the shippers of live stock upon the Texas and Pacific as a whole, since if that company is deprived of its equipment it can not perform its duty as a common carrier. It is suggested that we might direct the Texas and Pacific to deliver its equipment to its connections upon receiving from them a corresponding number of cars, but an order of this sort would amount to nothing unless we had authority to compel the connection to deliver a car whenever the Texas and Pacific tendered a loaded car. The attorney for the Texas and Pacific stated upon the argument and asserts in his brief that his company is ready at all times without an order to exchange cars upon these terms.

It seems to us that on the whole the best we can do in this case is to establish the through route and the joint rate. Exactly what the duties and liabilities of the respective carriers which make up the line so created may be are not altogether clear; but it seems reasonably certain that it is their duty to receive the live stock at the point of origin and to transport it to and deliver it at the point of destination. They must assume the burden of providing the necessary equipment for the through transportation, and if the stock is in fact transferred at a junction point the shipper is relieved of the burden of arranging for the details of this transfer. It must be assumed that these carriers will in good faith transport stock under these tariffs in such manner as will reasonably subserve the public interest, and this without doubt

in the majority of instances will require the movement of the same car from origin to destination. Any party to this proceeding can at any time apply to the Commission for a modification of or addition to such order.

The complaint alleges that the joint rates over these various lines in effect previous to April, 1904, when the Texas and Pacific Company canceled its through arrangements, were unreasonably high and asks that reasonable joint rates be fixed over the through routes to be established by it.

There is now pending before the Commission a complaint by the Cattle Raisers' Association of Texas, one of the complainants in this proceeding, by which the reasonableness of those cattle rates from Texas points to various markets, which were in effect in March, 1904, is put in issue. We shall leave all inquiry into the lawfulness of these rates for that case, and shall simply direct here that rates not exceeding those which were in effect at the time of the cancellation be restored.

It is our opinion, then, that the through routes and joint rates which were withdrawn by the Texas and Pacific in April, 1904, ought to be restored, and we recommend that the various defendants and other lines not defendants in this proceeding take such action. No formal order will be made for thirty days. While the necessary parties are before the Commission to enable it to establish certain of these through routes, this is not true of some of the most important. For example, the Pecos Valley lines, which connect with the Texas and Pacific at Pecos, are not parties to this proceeding; neither is the El Paso and Southwestern system, which connects with the Texas and Pacific at El Paso; neither are many of the lines by which access is had to the feeding pastures and the northern ranges. If no action is taken looking to the republication of these joint tariffs within thirty days, an order will be made, so far as can be upon the present record, and the complainants will be allowed to bring in such additional parties as they may be advised. Leave is hereby given to make any joint tariffs filed as above effective on ten days' notice.

MARCH 9, 1908.

AFTER RECESS.

At the expiration of the recess the committee resumed its session.

**STATEMENT OF CHARLES C. PAULDING, ESQ., SOLICITOR FOR
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD
COMPANY.**

Mr. PAULDING. I will be as brief as I can. The discussion has already been so long upon this bill, Mr. Chairman, that perhaps a lengthy discussion of it is not wanted from our side; and without taking up the different sections of the bill or the different propositions advanced in it, I will take up the two general propositions contained in it.

This bill proposes two things: First, a general statute of the United States governing car service, interchange of cars, and demurrage. Second, a proposition to throw those subjects into the hands of the Interstate Commerce Commission for hearing and decision and the making of rules and regulations when they decide that they are necessary. To the second of these propositions personally I give my cordial support. From the first of the propositions we dissent, for these reasons:

A statute is an inflexible thing. A pamphlet has been filed with this committee saying that it is a flexible statute; that it is one that can be made to cover all kinds of railroads, all kinds of traffic, and one

the provisions of which are so flexible that it will bring everything under its wing without hardship to any carrier.

Gentlemen, a statute says a thing shall be done or shall not be done, and that is the thing that must or must not be done. Anything else is a violation of the statute. And when we consider the carriers of the country and consider the different conditions and the different circumstances under which each carrier or each group of carriers works and conducts its transportation we can see at once that a general statute on the subject of car service governing every carrier of the country is an impracticability and would work a hardship on the majority of the carriers for this reason.

For the purpose of the discussion we can roughly divide the carriers of the country into two kinds: First, the originating and forwarding carriers, which would cover the carriers with whom the freight originates as well as the intermediate carriers by whom it is forwarded. Then there is the terminal carrier to whom the property is delivered and by whom it is delivered to the consignee.

The conditions differ absolutely between those two classes of carriers. If we take an originating road or a forwarding road it is able to get traffic loaded, to get it off its lines, to have its tracks free for other traffic, to have its power free for hauling other traffic. It gets rid of it. It delivers it to some one else. Some one else carries it forward and delivers it to the receiving terminal carrier. But the receiving terminal carrier, when it receives that traffic, has not only to take it and transport it; it transports it to the terminal, delivers it to the consignee, and there it must wait until the cars are unloaded and the carrier is free to take the empty car out and make room for more traffic to come in.

We hear a great deal about congestion of cars; and it is said that the greatest cause of that is a shortage of cars supplied by the different carriers. That may be so with some carriers, gentlemen. There may be some carriers which have not a sufficient equipment, and for that reason there is a shortage of cars to carry the freight. But that is not so with all carriers. It is not so, for instance, with a great terminal carrier.

If we take the road about which I know most, the road with which I am connected, that is a great terminal carrier. That road has next to the largest equipment in the United States. It has, with a mileage of 3,500 miles, something like 80,000 cars. That road, under the per diem rules agreement, with which I think you gentlemen are familiar, is a heavy debit carrier. Why? Because more cars are delivered from foreign roads to that road coming from the south, the west, the north, and the east—every direction—coming to the city of New York and the other terminal points upon that road, than that road could get equipment enough to exchange for if it were necessary to exchange car for car or tonnage for tonnage.

Cars are brought to the city of New York and sometimes remain there for weeks under the differing customs of different trades—the differing customs of different traffic. One case that I have in mind particularly is the custom in the hay traffic, where the example that I will give you occurred within two years. In the hay traffic the custom is to ship hay to the city of New York—not on order, but on commission—for sale. The hay comes into the city there consigned to some one, and he takes a delivery. The market may not be ripe, as he

thinks, and he keeps the car on the tracks, loaded, waiting for a proper market. Hay keeps coming in from day to day, and there have been times when in the city of New York we have had 2,000 cars loaded with hay, and the warehouses about there were stuffed with hay which had been unloaded from cars, waiting for a market and waiting for these people to give a chance to deliver.

That congested the terminal. That meant 2,000 idle cars, practically. It did not mean a shortage of cars, but it did mean that if we had had to give to the foreign roads 2,000 cars in exchange for those cars that we had there, we would have been out that much equipment on the general traffic; and we could not have done it, notwithstanding our huge equipment. And that is only one kind of traffic. The customs differ in every kind.

Mr. ESCH. Up in the Northwest, Mr. Paulding, I have seen a great many New York Central cars.

Mr. PAULDING. Yes, sir.

Mr. ESCH. Does your company complain about the connecting carriers holding your cars and failing to return them within a reasonable time?

Mr. PAULDING. Not to my knowledge, Mr. Esch. They go to the connecting carriers, but they come back to us quite promptly.

The CHAIRMAN. There is this difficulty in your illustration: Does not that grow out of the fact of your company assuming another duty, trying to perform the duty of a warehouseman?

Mr. PAULDING. No, sir. If you will permit me to answer the question in this way: It grows out of the custom of the trade and the lack of warehousing facilities at that terminal. The tremendous value of property at that terminal is such that people can not and will not put up warehouses, because the return from them would necessarily not be sufficient return upon the investment.

The CHAIRMAN. You are simply attempting to relieve a shipper or a consignee from taking care of his own freight?

Mr. PAULDING. It is a necessary consequence of the traffic, sir—necessary on account of the local conditions, and something which no statute can reach.

The CHAIRMAN. Do you not suppose that if the law of demurrage applied there those cars would be unloaded?

Mr. PAULDING. The law of demurrage does apply, sir. The shippers pay \$1 a day demurrage on the cars after the free time has elapsed. They have forty-eight hours' free time; but they would prefer to pay that storage rather than to sell on a losing market for their people who consign the property to them.

The CHAIRMAN. That is because it is cheaper to them than to warehouse it?

Mr. PAULDING. No, sir; not necessarily—because there is not the warehouse room. As I say, property is so valuable there that an investment in warehousing will necessarily not return a sufficient amount upon the investment; and, therefore, after they have stuffed the warehouses with the hay, as they do (I am frank to say they do their best), the cars must remain there, because there is nothing else for them to do.

Mr. TOWNSEND. Is this congestion frequent?

Mr. PAULDING. I should say, Mr. Townsend, that it happens once or twice a year. What I mean is, the congestion happens all the time,

but it gets so great once or twice a year that it is necessary for us to place an embargo on hay coming to the port of New York.

Mr. TOWNSEND. How long do they hold those cars and pay a dollar a day?

Mr. PAULDING. Instances have been known where they have been held a month or more.

Mr. TOWNSEND. A month?

Mr. PAULDING. Yes, sir.

Mr. TOWNSEND. That would be \$60,000 on 2,000 cars, as you have suggested?

Mr. PAULDING. Yes, sir.

Mr. TOWNSEND. That would pay a pretty big interest on almost any kind of an investment, would it not, for that length of time?

Mr. ESCH. About \$3 a ton of hay?

Mr. PAULDING. Yes; but you must take into consideration that those cars are idle all that time; those cars are not earning a cent in that time; it is idle equipment. They might earn a great deal more.

Mr. TOWNSEND. But I am talking about your proposition that it would not pay to build a warehouse.

Mr. PAULDING. No; it would not. That is what I am told. The average earning power of the car is in excess of \$1 a day if it is running on the road at that time, earning freight.

Mr. ESCH. Is that congestion true of any other freight?

Mr. PAULDING. Of some other kinds, sir.

Mr. ESCH. What other, for instance, in connection with the New York Central?

Mr. PAULDING. In connection with the movement of grain to get a certain steamer, and in connection with the movement of commodities from the West that come into the city of New York to take a certain steamer for the export trade.

Mr. ESCH. Those would not be such aggravated cases as in the case of hay?

Mr. PAULDING. The case of hay is perhaps the most aggravated case of all; but there are other cases. They depend largely on the custom of the trade—a custom which can not be changed.

That is one of the objections to this bill—that if a statute should say that when a foreign road delivers to our road a number of cars we would have to deliver back to that road the same number; it would be an impossibility, because, while that number of cars might be upon our tracks, they might not be and probably would not be available for use, for they would not be empty, and they would not be so that we could haul them out and deliver them. That proposition would perhaps not apply to an originating road which moved the cars off its line, or an intermediate forwarding company, but in the case of lines like the New York Central, the New York and New Haven, or other great terminal roads of that kind, such a requirement would be an impossibility, because it has been tried, gentlemen. Within the last year—I think the rule took effect on the 1st of July of last year—the per diem rules agreement of the American Railway Association provided that the per diem payment for cars should be 50 cents per day—that is, a car coming on a foreign road began to earn for its owners from that foreign road 50 cents per day from the minute it went on the road until it went

off again; and it was supposed that that would work a quicker return of cars and a more rapid interchange.

Mr. TOWNSEND. Do I understand you to say that they charge a demurrage of a dollar a day a car after forty-eight hours?

Mr. PAULDING. Yes, sir.

Mr. TOWNSEND. And yet the railroad company pays 25 cents a day?

Mr. PAULDING. Fifty cents, sir.

Mr. ESCH. When did they return to the former arbitrary of 25 cents?

Mr. PAULDING. I do not know that that is in effect on the eastern roads now.

Mr. TOWNSEND. Well, take it at 50 cents.

Mr. PAULDING. Yes, sir.

Mr. TOWNSEND. It is not altogether unprofitable, then, for a railroad company, if its cars are held up, and it is receiving a dollar a day, and only has to pay 50 cents a day for a car it does not own? It is making something out of traffic that it is not handling?

Mr. PAULDING. It is making a rental, Mr. Townsend, which is not profitable. I had occasion to figure rather closely on this proposition last year; and the 50 cents a day, while it is a heavy penalty for the railroads (because a large terminal railroad will have so many cars on its line that 50 cents a day amounts to thousands of dollars per day), is not really the earning power of that car. It barely pays interest and depreciation on the value of the car.

Mr. TOWNSEND. I can see that very readily—I imagine that would be so, at least; but I was getting at the point that where you get a dollar a day demurrage from a shipper who holds a car for a rise in the market, or something of that kind, and pay only 50 cents, or 25 cents, as the case may be, as has been testified to here—

Mr. PAULDING. Yes. Well, there is this to say about that: The charge of demurrage is a dollar a day flat, but it is not always collected, of course. The free time is forty-eight hours, and in some parts of New England by statute it is ninety-six hours, and in some Southern States by statute the same time. There are also conditions, under the Car Service Association rules, under which that demurrage is not collected. There may be reasons why the consignee could not unload within the free time—reasons beyond his control—so that the amount of demurrage collected, while nominally \$1 per day, is not really a very large amount. I saw the figures of one railroad a short time ago, and I think that in the year covered by that statement its debit per diem to other roads was over \$1,000,000, while its collection on demurrage was less than \$300,000, although it would have been greater had not the rules of the Car Service Association allowed a rebate (if you wish to call it so), a remission, of a large amount of demurrage.

Mr. TOWNSEND. Is remission of demurrage practiced now?

Mr. PAULDING. Yes, sir; under the rules of the Car Service Association, which are filed with the Commission.

Mr. TOWNSEND. Does that permit something in the nature of a rebate?

Mr. PAULDING. No; oh, no.

Mr. TOWNSEND. I ask that because my attention was called a few weeks ago to a case in Toledo—a case like this: Four men were dealing in hay down there, and the railroads in two of the cases at least had granted privileges upon their right of way to these dealers for their warehouses and side tracks, and so on.

Mr. PAULDING. Yes.

Mr. TOWNSEND. One of these dealers complained that his competitor could have cars shipped on the sidings in front of his warehouses, or where he was doing business, and the demurrage of a dollar a day was not exacted from him, while it was required of the man who wrote me the letter. It looked to me as though there was a case of actual discrimination. How do you explain that?

Mr. PAULDING. As to that I know nothing; but I do know that the Car Service Association rules, while they are not all uniform, provide something like this, in a general way: That demurrage of a dollar a day shall be collected under all circumstances; and they make certain rules as to the conditions under which that demurrage of a dollar a day will be remitted—a showing of such weather that the consignee can not unload, or circumstances over which the consignee has no control which prevent him from unloading; and they are generally rather rigid rules. But there is a provision that he shall pay his demurrage first and then make his application for a remission, which of course is an open record.

Mr. BUCKLAND. The private siding, however, gives him no additional right at all, under the demurrage rules, to any remission.

Mr. PAULDING. No; there is no right under the car-service rules to a remission. Every one is treated upon the same plane.

Mr. TOWNSEND. I did not suppose that there was; but this man stated this as a fact, and that the demurrage was paid, but remitted afterwards to his competitor under, as he claimed, exactly the same circumstances that existed in his own case.

Mr. BUCKLAND. Let me make a statement in that connection.

Mr. ESCH. Please get your name on the record.

Mr. BUCKLAND. My name is Edward G. Buckland. I am the vice-president of the New York, New Haven and Hartford Railroad Company. There are certain instances where, as in the case of coal coming in shiploads, a private siding is not large enough to take all of the cars that come up together, where the trestle is not large enough to dump all those cars, where there are remissions of the demurrage made where the company itself can not place the cars by reason of the character of the traffic coming in; but there is nothing whatever in the demurrage rules or car-service rules which gives a man any advantage over his competitor by reason of a private siding.

Mr. TOWNSEND. Do the railroad associations have the right to fix the conditions upon which demurrage shall be remitted?

Mr. BUCKLAND. Only upon filing a specific statement of those conditions with the Interstate Commerce Commission.

Mr. TOWNSEND. Only by getting permission, in other words?

Mr. BUCKLAND. Yes, sir.

Mr. PAULDING. They are all filed with Commission.

Mr. ESCH. Then it is a practice under the control of the Commission?

Mr. PAULDING. Oh, entirely, sir; a practice of which the Commission has entire knowledge, Mr. Esch; and I might say that we are before them a great many times, informally, talking to them

about this very matter. I have been there personally a number of times in connection with specific cases.

As I said, no general statute can be made to cover all these conditions under which all roads labor; but if the Interstate Commerce Commission have not already the power to make rules and regulations as to these car-service rules and exchange of cars, perhaps the best thing to be done is to give it to them. Opinions differ as to whether they already have the power under the discrimination part of the Hepburn Act. I have heard it argued among railroad lawyers both ways—some to whose opinions great weight should be given holding that they have the power; others, to whose opinion equal weight should perhaps be given, holding that they have not the power.

Mr. TOWNSEND. Have they not expressed themselves as believing that they do not have that power?

Mr. PAULDING. I do not know that they have flatly expressed themselves on that point, Mr. Townsend. In the investigation of the car-shortage matters two years ago Commissioner Lane, when he wrote his report, hinted that way, I think; but he did not say so. I do not think, though, that it has ever been decided that they have not or that they have the power. A short time ago there was brought before the committee a matter which would have decided that point; but it has never been heard, and is not likely to come to a hearing for a considerable time; so that a decision of the matter is still open.

So, on our own part, we cordially say that the best thing to do with this question, perhaps, is to throw it into the hands of the Commission and let them make rules governing car service, exchange of cars, demurrage, and those matters which may perhaps differ under different conditions, according as the different sections of the country may require different rules under the different conditions. That part of the bill, with certain amendments, we are very glad to say that we approve of and support.

Mr. ESCH. Mr. Paulding, have you anything to offer in regard to the grain-inspection bill? Counsel for one of the roads appeared here the other day and objected to one of the provisions of the bill, saying that the railroad interest was not sufficiently protected in regard to it. Your road is a great carrier of grain, is it not?

Mr. PAULDING. Yes, sir; and I am able to say, on behalf of our road, that we regard that as entirely a commercial question; that to-day in the port of New York such grain as we bring into that port is subject to inspection, under the rules of the produce exchange, by the inspectors of the produce exchange; and it is entirely a commercial question that is for the exchanges to decide.

Mr. ESCH. It becomes of interest in this respect, that the car can not be moved until an inspection has been had.

Mr. PAULDING. That is our practice to-day. It would make no difference in our practice.

Mr. ESCH. It would not change your practice?

Mr. PAULDING. No, sir. It is entirely a commercial question, as we regard it.

Mr. TOWNSEND. I do not know whether you have looked over the "perfect" measure that is supposed to cover it, H. R. 7582?

Mr. PAULDING. There have been so many of those—may I use one of these copies?

Mr. TOWNSEND. Certainly. That is one of the bills that we were to consider.

Mr. PAULDING. I think there are perhaps two objections that might be made to that, Mr. Townsend. The first is that the time set is rather short. The 1st of June, 1908, is rather a short time in which to make such an arrangement. A great deal of investigation will be necessary on the part of the Commission; and it could not, with the business it has on hand at present, make the investigation in that time. The second objection, perhaps, is to the recovery of a reasonable counsel or attorney's fee, which, under the Texas case in the United States Supreme Court, might make the bill unconstitutional.

Mr. TOWNSEND. That is true. In reference to the first objection, I will say that the bill was introduced when Congress first convened, the idea being that it would be taken up then.

Mr. PAULDING. Yes. Those are the only objections that I can see to the bill.

Mr. ESCH. Have you any objection to make to the bill regarding routing?

Mr. PAULDING. Judge Payson is more familiar with that matter than we are. I have a letter here bearing on it, part of which I would like to read. I would file the letter, excepting for the fact that it contains matters extraneous to the routing bill. It is a letter which was written to me by the second assistant freight traffic manager of the New York Central. If you will permit me, I will say who he is. He is a man who has been in the traffic business for something like thirty years. He was first connected with the Pennsylvania Railroad in their traffic business, then for a year he was secretary of the official classification committee in New York, obtaining in that way perhaps a greater familiarity than any man in the country with different kinds of traffic and different rates. You are familiar with the work of the official classification committee. Since that time he has been connected with the New York Central in various capacities in the traffic department, and now he occupies the position of second assistant freight traffic manager. He refers to section 2 particularly in this letter, and says this:

Referring to section 2, it provides that if the shipper fails to designate the route by which his property shall be transported it shall be the duty of the receiving carrier to charge and collect "the lowest rate published between points of origin and destination," and for failure to do so section 3 provides a fine of not exceeding \$5,000. The principal objections to this proposition are as follows:

First. It would impose upon the receiving carrier an excessive penalty for the lack of judgment or carelessness of all of its agents and employees concerned with the receiving and forwarding of freight.

Of course you are familiar with the decision of the Supreme Court—I have not the name of it in mind at present—which holds that where a mistake is made by an agent of a carrier in naming a rate, that mistake is the mistake of the agent, and the carrier must, if the agent names a lower rate than that stated in the tariff, collect from the shipper or the consignee the difference between the rate named by the agent and the rate named by the tariff, because the tariff rate is the only legal rate, and a mistake by the agent for any reason whatever would render the carrier liable for a large penalty under this bill which it might not reasonably be charged with.

Second. It would involve largely increased expense to carriers in the employment of agents of larger capacity and wider experience, and in the inspection and preservation of station records so as to insure, as far as human fallibility will permit, the application of the lowest available rate and the avoidance of penalty for negligence or carelessness of employees.

Third. As the bill is at present drafted, it would require that every freight agent of every carrier must be kept supplied with the tariffs of all other carriers applicable to interstate traffic in order to compute the lowest available combination of rates where no joint rates exist as to shipments not routed by shipper, or shipments would have to be held at point of origin until agents could obtain necessary information from their superior officers as to the rates of other carriers.

That is put very succinctly. To enlarge it a little bit, it is not always that a carrier has upon file all the rates of other railroads. A railroad might, without the concurrence of another carrier, name a rate from a point upon the line of the other carrier to a point upon its own line, and neglect to send to that carrier, although it had been filed according to law and published in its own stations, that tariff. So that when an agent was asked for a rate from Smithville to a point on the second carrier's line, he might have an old tariff there, without any knowledge on the part of the officers of his company or his own part that that tariff had been changed, and name that shipper that rate, believing, in perfect good faith, that that was so; and it would not be discovered until the property had gotten on the line of the second carrier that the rate had been changed. That, I might say, is not common. I have personally seen a number of cases of that kind.

Fourth. There are in force rates for different classes of freight transportation service—that is, all rail, or rail and water. In the absence of any routing directions by shipper it would be the duty of the receiving carrier to forward unrouted shipments via rail-and-water routes, which are lower than the rates applicable via all-rail routes, and this would, in many instances, be contrary to the desire of the shipper, as involving greater delay in transportation and incurring greater risk while water borne, and without the shipper being afforded opportunity to protect the property by marine insurance.

Of course the Harter Act holds a carrier by water free from damages for loss of property carried by water, even though that carrier be negligent.

Fifth. Section 2 makes it the duty of the receiving carrier to charge the lowest rate "published between points of origin and destination." There are at present in effect very many tariffs issued by certain carriers, which purport to publish rates from stations on the lines of other carriers and without the consent or concurrence of such other carriers. The bill as drafted would impose a penalty upon the receiving carrier for its lack of knowledge of the existence of tariffs issued by other carriers applying from points on its lines.

Mr. TOWNSEND. Then the published tariff is not of much account, is it?

Mr. PAULDING. Not in all cases; no, sir.

Mr. TOWNSEND. Do you think it is in the majority of cases?

Mr. PAULDING. Well, no; I would not go as far as that. I would say not in all cases. I understand there are something like 800,000 tariffs filed with the Interstate Commerce Commission, and of course it is impossible for any one carrier to keep track of those. They can get that information only from the present tariffs issued by its principal connections, copies of which it has and copies of which it keeps examining at the offices of the Commission.

The CHAIRMAN. Do you mean that there are 800,000 tariffs now on file that are in force?

Mr. PAULDING. I have been told so; yes, sir.

Mr. ESCH. Do you not mean schedules?

Mr. PAULDING. I mean schedules; not tariffs. I used, perhaps, the wrong word. As I said before, many tariffs or schedules are published by carriers which even have no direct connection with the originating carriers, naming or quoting rates from points on the line

of the originating carriers to points on their own roads, of which tariffs the originating carriers would have no knowledge whatever.

Mr. TOWNSEND. The shipper, then, is quite largely dependent upon the agent in getting the tariff rate, is he not?

Mr. PAULDING. Oh, yes, sir.

Mr. TOWNSEND. Do you believe the agent ought to be responsible for those statements that he makes to a shipper?

Mr. PAULDING. I do in these cases: Where the carrier that is the employer of the agent has done its best to have the agent supplied with tariffs applying to shipments from points on its line, and where the agent uses sufficient care, if he is not sure that he has the correct tariff, or where he has no quotation, to ask the proper official what the rates shall be—if he does not do that when he can not find the rate and guesses at the rate, of course he should be responsible.

Mr. ESCH. He can always get that by wire, can he not, from the general traffic manager?

Mr. PAULDING. Those are the instructions he has, I understand, on most of the roads; yes, sir; and of course if he does not follow his instructions he should be responsible.

Mr. TOWNSEND. Have you any objection, or has your road, so far as you know, any objection to a statute being enacted to that effect?

Mr. PAULDING. To just what effect?

Mr. TOWNSEND. Requiring the company to make good the statements of its agents to a shipper—its report on rates, the rate it puts into the bill of lading?

Mr. PAULDING. I hardly think that would be just in all cases, Mr. Townsend. I do not think that even the company should be held responsible in all cases for a misquotation, because it may be done in good faith. Where a railroad company quotes a rate it may in good faith quote one which had been changed within a day or two, which would be quoting the wrong rate, or what would not be a proper rate. But as it would be done in good faith it does not seem to me that in such a case, where there was no negligence on the part of the railroad company or of the agent in endeavoring to obtain information or in using such information as it had at hand, it should be held responsible for a mistake, because these mistakes are honest, sir.

Mr. TOWNSEND. You think, do you, that in those cases the shipper who is relying on the statement of the agent, in perfect good faith, and who has, according to your statement, no other way of finding out what he is going to pay, should stand the loss?

Mr. PAULDING. There would be no loss, Mr. Townsend, necessarily. If both parties make an honest mistake—if a shipper, for instance, goes to an agent of a railroad company to get a rate to some place, and the agent of the railroad company in good faith, either by a reference to the tariffs he has on file or by reference to his superior officers, quotes a rate that may be lower than a rate that has gone into effect within a few days and of which neither his company nor himself has knowledge, I do not see that there would be any damage to the shipper.

Mr. ADAMSON. There might be a case in which the transaction itself depended on the rate quoted.

Mr. PAULDING. There might be, sir.

Mr. TOWNSEND. I was going to say that in the very case you have mentioned the shipper has to stand the loss, does he not?

Mr. PAULDING. Yes, sir; if there is any loss, the shipper has to stand it.

Mr. TOWNSEND. He has acted in good faith. He did not have any way of finding out the rate. The agent did have a way, if he had chosen to employ it.

Mr. PAULDING. The shipper has another way, which, of course, is cumbersome; but there is another way that he can use.

Mr. TOWNSEND. What is it?

Mr. PAULDING. It is by writing to the Interstate Commerce Commission and obtaining a quotation from them; and that is not unusual, although it is cumbersome and takes some time. Personally, I have known of cases where shippers have done that.

Mr. TOWNSEND. You know, do you not, that these cases that I have mentioned are not uncommon?

Mr. PAULDING. Oh, they are not uncommon, I am bound to say.

Mr. TOWNSEND. They are very common.

Mr. PAULDING. No; I would not say they are very common. They are not uncommon, Mr. Townsend.

Mr. TOWNSEND. A great many of them were brought to my attention from the locality where I live during the last summer. There was a case of a man who shipped some hay. He took particular pains to go to the agent first to find out what it was going to cost him to ship that hay into the South. He got a letter or a statement in writing telling just exactly what the freight rate was. He sold his hay on that basis and shipped it. They imposed a much larger freight rate upon him at the other end, which meant a loss to him on the whole shipment.

Mr. PAULDING. Under the law he was bound to know what that rate was, Mr. Townsend. As the Hepburn law is drawn, he should have known whether the rate was right or not. Practically, of course, he did depend on the agent; but he was presumed to know what the rate was.

Mr. TOWNSEND. But Mr. Lincoln, who was on the stand the other day, said that even he, with thirty years' experience in railroading, a good deal of the time engaged in making tariffs, would feel unsafe in going in and dissecting a tariff that he had not made and advising a shipper as to what the rate would be.

Mr. PAULDING. I was amazed to hear him make that statement. It shows either that his experience in making rates is rather limited or that his reading of tariffs has been somewhat imperfect.

Mr. ESCH. You will admit, Mr. Paulding, that the ordinary shipper can not go to the station and look over the files of the schedules and get any intelligent knowledge of the rate?

Mr. PAULDING. That would depend very largely on the place to which he wanted to make the shipment. If he wanted to send his freight to some obscure point—

Mr. ESCH. Between points on the same system he could do that; but suppose he shipped it beyond the terminal of the carrier?

Mr. PAULDING. Where there was a through route and joint rate in effect it would be no trouble to him at all, unless it were to some obscure point, where he would have to combine certain rates. Between principal points on through routes he would have no difficulty.

Mr. TOWNSEND. You think, do you, that it is possible for an expert to understand all about this?

Mr. PAULDING. Yes, sir.

Mr. TOWNSEND. Do you not think, then, that the railroad ought to be obliged to put in men who do know that situation, and furnish them with the information, if it can be done, so that when the shipper goes and asks for a freight rate if it is given to him and written into the bill of lading it shall mean what it says?

Mr. PAULDING. That is done so far as possible. Of course, Mr. Townsend, you must understand that a large railroad system, employing thousands of men and thousands of agents, can not always get the best men available for that purpose; it has to take the best it can get. It can not get the epitome of intelligence of that locality to run its freight station or to quote rates. It does the best it can with the material at its disposal, and that is not always the best that there is in that part of the country by any means. It is the best that comes to the railroad company, and the best the railroad company is able to get.

Mr. TOWNSEND. But it is almost the universal practice in this country, is it not, to make the principal responsible for the act of his agent? We do that in almost all kinds of business. Especially in business transactions of this kind ought not that to be the case?

Mr. PAULDING. Not unless there is negligence on the part of the agent. If there is carelessness on his part, by which he did not properly attend to his business and take proper care in doing the work for which he is paid by his employer, the employer should be held liable; and that is so whether he is an employee of a railroad company or any other industry.

Mr. ESCH. Are there instances where the agent quotes to the shipper a rate lower than the legal rate?

Mr. PAULDING. I have known such instances; yes, sir.

Mr. ESCH. That case would inure to the benefit of the shipper.

Mr. TOWNSEND. But he does not get it; they collect the higher rate.

Mr. HUBBARD. You mean instances where he quotes a higher rate.

Mr. ESCH. Yes.

Mr. PAULDING. There is this to be said: The published rate is the legal rate, sir; and within the last year—that is, between the 1st of January, 1907, and the 1st of January, 1908—when I was at the head of the litigation department of the law department of our road, some of those cases were brought to me; and upon investigation each one turned out to be such a case as I have stated to you. That is, it was a case where the rate had been raised by the other road, and its tariff had been filed with the Commission within a few days before the quotation of the rate by the agent or by the freight agent to whom he had referred the question, and no copies of that tariff had up to that time been sent to our company. There were a number of those cases, and in each case, under the decision of the Supreme Court to which I have referred, it was compulsory on the railroad to collect the full amount, because there is no more fruitful source of rebate (using "rebate" in the sense in which it is used in the Elkins law) than just that thing, and there was not in the past. That was one of the main sources of rebates—to quote a lower rate than the published rate and then say it was a mistake. That does not exist any longer; but that was one of the most fruitful sources of rebates. The

railroads, to my knowledge, have stamped out the rebate evil with the assistance of Congress.

Mr. TOWNSEND. Mr. Lincoln obviated that objection the other day by making all claims collectible through the Interstate Commerce Commission. They would have to pass upon them, and it would not be left to the shipper. The Commission would be directed to determine whether or not a mistake had been made and whether the freight shall be carried at the lower rate.

Mr. PAULDING. Theoretically there would be no objection to that. The objection might be a practical one—that the business of the Commission is so great that it could not take those matters up; that is all. The business of the Commission has increased so greatly, and the business before it is so great, that it does not have time to take up all matters that are brought before it.

There is now pending, in connection with this bill, before the Interstate Commerce Commission and under consideration by them a proposed rule which, according to our information, they are considering promulgating, which reads this way:

When a tariff specifies routing, the rates may not be applied via routes not specified. A tariff may show the routing ordinarily and customarily to be used and may provide that if from any cause shipments are sent via other junction points but over the lines of carriers parties to the tariff the rates will apply.

If a tariff contains no routing directions, the joint rates shown therein are applicable between the points specified via the lines of any and all carriers that are participants in the tariff; and shipper is entitled to those rates whether or not the carriers have agreed divisions of the rates via the junction through which the shipment moves. If agent of carriers bills or sends shipment via a route or junction point that is covered by the tariff but via which no division of the rates applies, it is for the carriers to agree between themselves upon the division of the rates, and the intermediate or delivering carriers may demand from the carrier whose agent so misleads shipment their full local rates for the services which they perform.

Mr. BUCKLAND. Is not that in effect now?

Mr. PAULDING. I do not know whether it is in effect now or not. Mr. Kallman's letter was written to me on the 7th, and he states that it is now under consideration by the Commission for promulgation.

Mr. PAYSON. Did that arise under some case that came up before the Commission?

Mr. PAULDING. I do not know, Mr. Payson. Mr. Buckland may know.

Mr. BUCKLAND. I thought rule 57, which was promulgated the 18th of last March, practically covered that point.

Mr. PAULDING. I think it is not so broad as this.

Mr. BUCKLAND. Perhaps not.

Mr. PAULDING. That would seem to be a perfect remedy for both shippers and carriers.

Mr. MANN. Would you suppose that the ordinary small shipper who reads 57 rules of that kind would understand anything about what they meant?

Mr. PAULDING. A rule of this sort would be for the carrier to apply, Mr. Mann.

Mr. MANN. Yes; but you spoke of its protecting the shipper as well as the carrier.

Mr. PAULDING. It does, because the carrier would have to apply it, it being a rule of the Commission.

Mr. MANN. That would mean, then, that if the shipper made application to the carrier's agent he would have to rely upon what the carrier's agent told him?

Mr. PAULDING. Oh, yes; if he made application to that agent and took no further steps.

Mr. MANN. Should not the carrier be held responsible, then, for what its agent does say?

Mr. PAULDING. For the negligence of its agent, yes, or for its own negligence; but for a mistake made in good faith, no, sir; I do not think so, because—

Mr. MANN. But how can you tell about the matter of good faith? When an agent gives a rate, how can you tell whether it is given in good faith or not?

Mr. PAULDING. Because it is assumed that a railroad company is not going to come in conflict with the interstate-commerce law by quoting a rate which is an illegal rate. It is going to quote the legal rate so far as it knows it. But there are cases in which the carriers do not know the legal rate. Perhaps the mails have not gotten the tariffs around to them yet. As I said, those are instances which have come under my own personal observation.

Mr. MANN. Are there not a great many instances in which it is just pure carelessness on the part of the railroad company?

Mr. PAULDING. In those cases where it was the result of pure carelessness the railroad company should be responsible.

Mr. MANN. Let me give you a case I had myself a few years ago. I had a shipment made from this city to Grand Crossing, Chicago. I was quoted a rate of \$45 down here. They telephoned to me from South Chicago, saying that the freight was there, and that the rate was \$75. It had not yet been delivered to Grand Crossing. I sent a man down for it with the money, and when he got down there he telephoned me that the freight bill was \$85. Of course, I told him to pay it as quickly as he could before it got any higher. [Laughter.] If that had not been delivered it would not have cost the railroad company \$5 to switch it over to where they had agreed to send it for \$45. It was not on two different lines. Of course I had the written rate. How could a mistake of that sort occur and the railroad company not properly be held responsible?

Mr. PAULDING. The circumstances of that case would govern, of course. I know nothing about that.

Mr. MANN. You know as much about it as I do.

Mr. ADAMSON. They thought that they had an easy case there.

Mr. MANN. That is all that I know about it.

Mr. HUBBARD. But suppose there is an innocent mistake, which could have been prevented by the railroad company or by the agent, but which could under no circumstances have been prevented by the shipper. Ought not the railroad company to respond in damages?

Mr. PAULDING. I think the answer to that is, sir, that there is no case which under no circumstances could have been prevented by the shipper, because the shipper can always (although he usually does not) write to the Commission to obtain the Commission's quotation from the tariffs.

Mr. HUBBARD. Do you think it is reasonable to insist that a shipper, particularly one of these who makes a small shipment in a small line of business, should do that?

Mr. PAULDING. It is not reasonable, but that is his right, and some of them do it.

Mr. HUBBARD. Yes; but let us consider it on a reasonable basis, then. Assuming that the shipper can not be expected to do that, what would you say?

Mr. PAULDING. I should say that these tariffs are filed with the Commission, sir, and the answer is that they are presumed to know them as well as we are.

Mr. HUBBARD. But you also agree that it is not reasonable to expect a man in a small line of business to make that inquiry of the Commission?

Mr. PAULDING. It is the custom of the business for the shipper to get them from the railroad company to whom he takes his freight, of course.

Mr. HUBBARD. May he not fairly rely on that custom? And if so, what would you say to the question I have asked you?

Mr. PAULDING. I should say he does rely on that custom in most cases; and I further say that if any mistakes are made there, innocent mistakes, honest mistakes, I think there should be—

Mr. HUBBARD. But are those things that could possibly have been prevented by either the agent or the railroad company?

Mr. PAULDING. By perhaps holding his freight and sending to the Interstate Commerce Commission ourselves—yes, sir; and only in that way—only in that way.

Mr. ESCH. Would that entail a long delay?

Mr. PAULDING. That would entail a long delay, a delay of the time necessary to send to the Commission and get a quotation.

Mr. HUBBARD. It would take you just as long as it would take the shipper, would it?

Mr. PAULDING. Yes, sir; the same time. In most cases the shipper wants, of course, to get his freight out as quickly as he can, particularly at small stations.

Mr. RYAN. That would greatly interfere with the dispatch of business?

Mr. PAULDING. That would greatly interfere with the dispatch of business, and perhaps with his market, because the shipper ships for a market. He does not ship just because he wants to.

Mr. RYAN. Are cases of that sort of frequent occurrence?

Mr. PAULDING. Not of frequent occurrence; but they do occur, sir. The percentage, of course, is very small; because the number of rates quoted to shippers by one railroad in a year are up in the millions, and the number of mistakes of that sort which came within my observation in the last year upon one railroad were less than fifty. The exact number I have not in mind. You see, the proportion is infinitesimal—that is, the percentage is infinitesimal.

Mr. ESCH. You are a man of experience in these matters. Have you any views to express upon the so-called Fulton proposition?

Mr. PAULDING. Yes, sir.

Mr. ESCH. I should like to hear those views.

(A member of the committee asked what the Fulton proposition was.)

Mr. ESCH. The Fulton proposition is that the Interstate Commerce Commission shall have power to pass upon a rate before it is raised by the carrier.

Mr. PAULDING. Would you care to hear me now, Mr. Esch, or let Mr. Payson go on with the discussion?

Mr. PAYSON. Oh, no; go on while you have the floor.

Mr. PAULDING. I have not the Fulton bill before me; but—

Mr. ESCH. What have you to say as to the general proposition?

Mr. PAULDING. The general principle of the Fulton bill is that the Interstate Commerce Commission should have power, whether in its discretion or not, upon a proper protest being made, to suspend the operation of a rate until a hearing and determination, either by it or some competent party, as to the reasonableness of that rate. I think perhaps that is a correct statement of the principle of the bill.

There are objections to that from almost every way in which you can look at it—from the legal standpoint; from the practical standpoint; from the standpoint of the lawyer as well as that of the traffic man and of the operating man.

The first real objection to the bill is that it confers upon the Commission a power that is not enjoyed by any court in this country or any other country whose system of jurisprudence is similar to ours; that it gives to the Commission an injunctive power without redress on the part of the carrier in case the carrier is damaged; that it gives to the Commission not only the power which is enjoyed to-day by courts of equity, but a greater power; and that it gives to shippers, or to any one shipper who makes a protest, the same power as a court of equity.

If to-day a rate is advanced by a carrier, and the tariff is filed with the Commission, thirty days' notice is given; and the shipper has two remedies if he is damaged by that advance: First, on a proper showing, he may obtain an injunction from a court of equity enjoining that advance in rates. Or he can wait until the rate has gone into effect, pay his advance, make his complaint before the Commission, complaining that it is an unreasonable and an unjust rate, and then if the Commission or a competent court after the decision of the Commission thinks that it is an unjust or unreasonable rate, get his reparation. The remedy as to going before the Commission is given him by the act. The other remedy, as to the courts, is given him by the common law. He has those rights to-day.

Mr. TOWNSEND. But what happens to his business in the meanwhile? Will he continue to ship, do you think, and to make contracts for shipment, until that rate is determined?

Mr. PAULDING. He will if he waits to go before the Commission; yes, sir. If he does not, and makes a *prima facie* case before the court, and enjoins the rate—

Mr. TOWNSEND. How does it differ from the principle of the rate bill now, except that the question of reasonableness or unreasonableness can be determined, possibly, before the rate goes into effect, and after the notice of raise has been given? Under the present law, if it is an existing rate, the complainant can have it held up until the question is determined. Under the proposed law or amendment the same principle is to apply when the notice is given.

Mr. PAULDING. Because under the present law, Mr. Townsend, you say that an advance in rates is *prima facie* unreasonable; that an advance in rates is *prima facie* illegal. You shift the burden of proof by this proposed law.

Mr. TOWNSEND. I think that is true; but an amendment or modification of that feature was suggested the other day by the gentlemen

who were opposing it and admitting that something of that kind ought to be done; that the Commission might in its discretion do this. Mr. Knapp objected to having it mandatory that it should be done in all cases; but it might in his discretion be done.

Mr. PAULDING. Not only would the answer which I have just made apply to that, but there is another answer to it; and that is this: You are only looking at one side of the question; and there are two sides, not only to every other question, but to this one. You have to look at the carrier's side, sir.

Mr. TOWNSEND. Surely.

Mr. PAULDING. The carrier to-day makes a rate on a commodity, and that rate goes into effect and stays in effect. Circumstances change. The expense of operation or other circumstances may make it necessary to raise that rate. It is common knowledge among all of us that a railroad does not raise a rate unless it has to. When the circumstances are such that the railroad must raise that rate, it raises it and gives notice to the Commission. As the next step a shipper makes a protest to the Commission, which, in its discretion, suspends the operation of that rate and suspends the collection of anything under it, making it peremptory upon the carrier to continue its old rate in effect, even though it may do business at a loss. Finally, after a hearing by the Commission or by the court, it is determined that that advance in rates is unjust or unreasonable, or that it is proper. There is no reparation to the carrier during all that time. During all the months, perhaps, that it has taken to decide that question, the carrier has lost those earnings which are finally decided by the Commission to be proper.

Mr. TOWNSEND. Do you think it would be seriously detrimental to the railroad, for instance, if the old rate had been in existence for ten or fifteen years, to hold it up for thirty days or sixty days longer?

Mr. PAULDING. Our experience has been that those matters are not decided in thirty days or sixty days, Mr. Townsend. A case in point is this: The case which I understand gave rise to the request for the passage of the principle involved in this bill was one where the western lumber roads raised their rates last summer.

Mr. TOWNSEND. They raised them 25 per cent.

Mr. PAULDING. Something like that; whatever it was. The lumber dealers went into court and obtained from the court an injunction in somewhat this style. The court said:

We will not enjoin the going into effect of this rate. It can go into effect at the expiration of the thirty days. But we will enjoin the collection by the defendant of that advance in the rate. We will let the new rate go into effect, but the only thing you can collect is the old rate; and you will have to keep your books on the difference between the old rate and the new rate and see what that difference is. Then when it is finally decided you can either collect it or you can not collect it, as the decision may be.

That matter came on before the Commission at once for a hearing. That was early last fall. It was only argued orally before the Commission last week and has not yet been decided. The pressure of business on the Commission is so great that it was impossible for them to take the matter up at once, and they have reached it at the earliest possible moment—six months after the case was brought before them. All that time, sir, the carriers have not only been put to the expense of losing this advance, if it is reasonable, but they are put to the enormous expense of the additional bookkeeping necessary to show

what they are collecting and what they should be collecting in the advance under the rate.

Mr. TOWNSEND. But that case was submitted as far as testimony was concerned last December or January.

Mr. PAULDING. Yes, sir; and it was argued last week. The arguments were concluded, I am told, on Friday morning.

Mr. ESCH. That increase of the rate on lumber from 40 to 50 cents a hundred practically demoralized the lumber industry on the Pacific slope.

Mr. PAULDING. I have no knowledge on that subject at all.

Mr. ESCH. I understand that is so.

Mr. PAULDING. I have no knowledge of the reasons for the advance. I simply know the legal history of the case.

Mr. ESCH. It was a rate that had been maintained for quite a number of years, I understand.

Mr. PAULDING. Yes; I have no knowledge of that question.

Mr. TOWNSEND. Fifteen years.

Mr. PAULDING. Those are some of the disadvantages. The carrier has no reparation at all; the shipper has. He already has reparation. He already has remedies under the Hepburn Act. The Hepburn Act has been in effect a year and a half, or almost two years; and we do not yet know to what extent those remedies are applicable, because there has been no thorough decision of the rules under that act, or the application of those rules. We are proposing now to amend it, and to cast an additional burden on the carriers and additional duties upon the Commission before we have found out exactly what the original act means, or to what extent a shipper's rights can be protected by application to the Commission. Our opinion is that the shipper will be absolutely protected in every way by application to the Commission under the law as it is to-day, without shifting the burden of proof, and without giving the Commission powers which are perhaps contrary to the Constitution; without giving the Commission undue or unreasonable work to do; without saying, as you will say if this bill is passed, to each carrier, "Your rates must remain as they are. You can not change them without prima facie making an unreasonable rate." Because the practical effect of this law would be, as traffic men from all over the country have said to me, that rates would not be changed. There would be no lowering of rates to meet a sudden demand for their lowering by reason of some sudden depression in a certain business; because even though the business might demand the lowering of the rate, it would be practically impossible to raise the rate to its normal level, or above, if conditions should demand it; so that no rate would ever be lowered or advanced. The present level of rates would be maintained until a repeal of this law, or something happened that would make it possible to do those things practically.

**STATEMENT OF EDWARD G. BUCKLAND, ESQ., VICE-PRESIDENT
OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY.**

Mr. BUCKLAND. Gentlemen of the committee, I represent the New York, New Haven and Hartford Railroad Company. I am vice-president of that road. Our line, as you possibly may know, extends from New York and Long Island Sound ports upon the south to prac-

tically all of the cotton-manufacturing centers in New England, either immediately or through connection with the Boston and Maine.

There is one large industry, the shipment of raw cotton into our territory, which is governed by rather peculiar conditions, and conditions which so far we have not been able to rectify as we wish they might be rectified. This has to do particularly with that feature of the Culberson-Smith bill regarding the question of demurrage and the return of car for car.

I will be as brief as I can and describe to you how raw cotton is handled into our territory. It is sent from the gin to a compress station, which may be in Memphis or somewhere in that vicinity, and there is compressed into bales. Each bale is marked with a series of letters which indicate the quality of the cotton. For instance, "E-Y-X" would indicate cotton of a certain staple and means cotton on a certain consignment which corresponds to a bill of lading and a waybill sending that cotton to its destination. There is no other mark on the cotton. So far it has been found impracticable to route cotton to destinations by tags which indicate upon the bales just where the cotton is going.

That cotton is sent North to some of the southern gateways. Most of the cotton comes either via Cairo or via East St. Louis. There, by reason of the fact that the southern railroads will not permit their cars to go through, the cotton is unloaded and is placed in other cars.

Mr. ESCH. That is a recent practice, is it not?

Mr. BUCKLAND. No, sir; it has been the practice for a great many years.

Mr. ESCH. For the southern roads?

Mr. BUCKLAND. Yes, sir; it is one of the most fruitful sources of trouble that we have. Most cotton will be consigned, say, 50 bales to a car, and in consignments of 100 bales. It is loaded at the compress points by people who are experienced in loading, and in cars which are specially designed to carry cotton. When it is unloaded at the transfer point it is loaded into other cars by loaders who are not so expert, and frequently into cars which are not adapted to the carrying of cotton. They are the cars which happen to be there—the ordinary box cars.

The result is that whereas a shipment of 100 bales of cotton may start out in two carloads and get as far as Cairo or East St. Louis in those cars, when it is taken out and put into other cars there will be 10 bales left over. All there is to indicate the character of that cotton is the initials which I speak of, which are somewhere on the cotton, stenciled upon it. Those 10 bales of cotton are loaded into some other car with a part of some other consignment, and go forward to destination, at Fall River or Providence or New Bedford or Lowell or Fitchburg or Manchester, or whatever it may be. That brings into our territory a great many part consignments. You gentlemen probably know that a consignee is under no obligation to take a part of a consignment until he gets it all; and a great many consignees in our territory take advantage of that and decline to receive their cotton until the entire consignment has come through. Then it is a custom of the trade there that before receiving cotton, particularly cotton which is consigned to "order and notify"—and I take it that you gentlemen are familiar with the "order and notify" method of shipment—the ultimate consignee shall have the opportunity of weighing and sampling the cotton. So that all of that results in a

congestion in cars or storehouses at the end of the route during the cotton-shipment season, that extends from the beginning of October to well along into February or March.

The result is that although at Fall River and Providence and at the other large cotton-receiving places we have established large storehouses, in which we store cotton free pending its ultimate delivery, yet we never have been able to get storehouses enough to handle all of the cotton that comes into our territory. And the further result is that every year we have a great many cars upon our system belonging to other roads, containing cotton that we can not deliver. At one time there were over 2,000 cars in the vicinity of Fall River containing cotton that could not be delivered.

Mr. MANN. Why?

Mr. BUCKLAND. For the reasons I have stated—that they were not complete shipments, or by reason of our storehouses having been so congested with cotton which had been received that we could not get the cars up to the storehouses and obey the trade rule that cotton may be sampled and weighed before it is actually delivered. That would absolutely prevent our returning car for car; and however many cars we might have upon our system, it would work very hard against us, and would work very hard against any terminal road that handles cotton.

I only wanted to call your attention to that peculiar trade custom. If you will investigate it, you will find, I think, that all of the New England roads that handle cotton are confronted with that same congestion.

It is said that no man has the right to criticise unless he can suggest a remedy. Naturally the remedy to be suggested would be, first, that cotton should be consigned to destination, so that if any cotton got astray in these part carloads it would go, under the rules which govern all of our transportation companies, to destination without any billing. The second would be, perhaps, to impose a penalty upon the shippers for taking their cotton piecemeal. Perhaps a third would be to pass a rule which would not permit cotton to be shipped subject to being weighed and sampled. All of those things we have endeavored to do from time to time without any particular success, because there has been no cooperation on the part of the roads south of us, and consequently the shippers in New England are not going to impose any burden upon themselves which they do not have to impose.

Therefore, when we are considering the question of demurrage and car service and of exchange of car for car, it is wise, I think, to look into each particular trade, each particular community, and see whether it does not inflict an unnecessary hardship.

STATEMENT OF CHARLES J. FAULKNER, ESQ.

Mr. FAULKNER. Mr. Chairman and gentlemen, I had hoped that you would not have been so onerously engaged at the present session of Congress in passing upon a great many of these interstate-commerce bills. After the passage of the Hepburn bill, which, with the Elkins bill, seemed to prohibit every conceivable vice that the railroads could be guilty of, we hoped that peace would come to the roads for a while, at least, until the full force, power, and effectiveness of the Hepburn bill had been tried. I desire to say, further, Mr. Chairman,

that the railroads have met the Interstate Commerce Commission halfway in the enforcement of the Hepburn bill. In other words, they have, I think, acquiesced in every one of their decisions, unless with one exception, whether they regarded them as fully in accordance with the provisions of the statute passed by Congress or not, their object and purpose being to assist in making it a thoroughly practical and operative bill; and if there were any defects found in it, after a full investigation by the Commission, the hope was entertained that the Commission could then come to Congress and recommend, with the full cooperation of the roads, such amendments to the law as would make it an effective and operative bill.

But it seems that we are confronted at this time with more legislation than we have had at any session that I have been attending before this committee; and before I speak of one or two of these bills I would further like to suggest to the committee a practical thought. To-day the operating and traffic officers of every system of railroad in this country are engaged, every moment of the day and part of the night, in trying to make ends meet. It is almost impossible to induce those gentlemen to leave their desks to come on here to give you the practical information that you are seeking in reference to the provisions of the large number of bills now pending before this committee. I would earnestly suggest, if it should meet the approval of this committee, that they try to segregate from this great mass of 72 bills now pending before it such measures as they think it is the duty of the committee to consider, in the public interest, and determine the wisdom of passing them or not passing them at the present session. When they have segregated those bills, we would then have an opportunity to fully present the views of the railroads upon those particular measures.

You can see, gentlemen, how we are situated. We have to take each one of these hearings up day by day and consider a large number of bills that we are satisfied it will not be the desire of the committee to pass; and yet we have no information which will guide us in our investigation of them, or in bringing witnesses here who can present an intelligent and a practical argument of the effect of the provisions of these bills.

Mr. TOWNSEND. Have you looked over those 72 bills to discover how many you are willing to support?

Mr. FAULKNER. I think there are very few that either the committee or I (if I must speak for myself) would be willing to support in the form in which they are presented to Congress.

I shall assume, Mr. Chairman, in considering these bills, that of those fixed for hearing on March 5, No. 9118, introduced by Mr. Stevens, the object of which is to transfer the Commission and put it under the control of the Department of Commerce and Labor, will not be pressed at this session of Congress.

Mr. MANN. Why not?

Mr. FAULKNER. I suppose it is an educational measure, one brought forward for the purpose of directing Congress's attention and this committee's attention to the idea embraced in it, but with no real purpose of pressing it at this time for consideration. It is a very elaborate bill, and I have not heard any indication upon the part of the committee or from Mr. Stevens himself that he intended to press it at the present session. That is my only reason for the suggestion.

Mr. TOWNSEND. He stated the other day that he did not want to press it.

Mr. MANN. I understood he intended to press it, though perhaps not under this particular bill, because that is only a suggestion. That is not elaborate; there is nothing to the bill except one or two changes in words.

Mr. FAULKNER. That is all; but it involves an important principle of administration.

Mr. MANN. It involves administrative features.

Mr. FAULKNER. I say it involves a principle of administration; I do not know that I have anything to say as to the wisdom of the proposition, but will leave that to the judgment of this committee.

The other two bills set for to-day, Nos. 9222 and 9223, I will pass over also, unless the propounders of those bills will indicate that it is desired to press them. I am trying, gentlemen, to eliminate some of the bills on the schedule which you have made. I shall seek to combine several of these in considering them.

House bill 157 and House bill 9114 are two bills that I think may properly be considered together. The first of these bills provides:

That hereafter all common carriers engaged in interstate commerce shall pay upon all just claims 6 per cent interest for all time that shall elapse from the presentation of said claims until the payment thereof.

Mr. TOWNSEND. Senator, do you want to take up Mr. Madison's bill, No. 16981, concerning claims against railroads? It is of the same date, March 6.

Mr. FAULKNER. If it is the understanding of the committee that those bills that have not been pressed before the committee shall be passed over without any further consideration by the committee, of course I do not want to take up a moment of the time of the committee in discussing them. I shall pass them over also and say nothing further about them. I will pass over Mr. Wallace's bill, No. 13083, for the same reason as given for the other.

As to the bill introduced by Mr. Madison, No. 16981, the only amendment I understand to the interstate-commerce act is found on page 7 of that bill, to the effect that upon a claim in writing being made by the owner of the lost property or his assignee for the payment of the amount of loss, damage, or injury the carriers shall notify the claimant in writing within ninety days; and on page 8 there is also a new provision as follows [reads]:

If any carrier, railroad, or transportation company shall fail to notify a claimant as herein provided within ninety days after claim has been made as herein provided, and said claimant, or his assignee, shall thereafter obtain a judgment upon said claim or any part thereof in any court of competent jurisdiction, whether a court of the United States, or of some State, Territory, or the District of Columbia, the jury trying the case, or the court, if the trial is before the court without a jury, shall determine what is a reasonable attorney's fee for the plaintiff's attorney, if he has employed an attorney in said cause, and the same shall be taxed and collected as a part of the costs of the suit.

In considering the unconstitutionality of this law, I think it is not unwise to call the attention of the committee at this time to the decision of Justice White in the case of *Howard v. The Illinois Central Railroad Company*, where, in speaking of the relation of the railroads to the Federal Government in the employers' liability act, he said:

It remains only to consider the contention which we have previously quoted that the act is constitutional, although it embraces subjects not within the power of Con-

gress to regulate, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state this proposition is to refute it.

This provision in reference to railroad debts is not in any way a regulation of commerce. To fix a liability as resulting from the failure of a railroad company to return within ninety days a statement as to whether they admit the claim, and if not admitted in whole, what part they do admit, and providing that the jury may impose a different penalty upon a carrier or a person engaged in interstate commerce transportation for the collection of a debt other than is imposed upon other citizens should the jury determine upon trial that the defendant is liable for the claim, is class legislation and unconstitutional. It is right under the decisions of the Supreme Court, and of the State, for Congress to classify railroads, but when they do so it must rest upon a natural, necessary difference from other citizens over which Congress has power and jurisdiction to impose liabilities; and unless such distinction is clearly drawn by the language of the bill and rests upon the difference between it and other persons or corporations engaged in similar occupation or employment—I mean who owe debts—located in the territory over which Congress has entire and plenary jurisdiction, it is a faulty piece of legislation, the classification not extending far enough.

This Texas case is a complete illustration of that principle. In that case the State of Texas imposed the penalty of \$10 attorney's fee where the claim was under \$50, if the claimant employed an attorney to enforce it. The supreme court of Texas passed upon the constitutionality of that act and held it to be constitutional. The Supreme Court of the United States, in the case of the Gulf, Colorado and Santa Fe against Ellis (165 U. S.), reviewed that decision. The decision of that case covered almost every conceivable view that could be presented in argument. The reason for such an elaborate opinion as was delivered by Justice Brewer in that case was this: It seems the appellee had no attorney before the court, and that was commented upon in the opinion of the minority of the court; but there was a very elaborate decision of the supreme court of the State of Texas discussing every view that was taken by counsel and by the court in sustaining the constitutionality of the act, and I therefore assume that Mr. Justice Brewer felt called upon to review all of those contentions and to explain them, and annulled the opinion of the supreme court of the State of Texas. As stated, that case was the Gulf, Colorado and Santa Fe Railroad Company v. Ellis (165 U. S., 152). In the discussion Mr. Justice Brewer uses this language: "The contention is that it operates to deprive the railroad companies of property without due process of law"—it is important for the committee to remember this expression, for the reason that it will be maintained that the fifth amendment did not protect the rights of the parties. It was not necessary for him to go to the extent of deciding this case under the fifth amendment, as he could decide it under the clause of the fourteenth amendment, which not only embraces that clause of the fifth amendment, but also the further clause of the language as to the equal protection of the laws. But you will find that he based this decision upon both amendments, the "due-process" clause as well as the "equal protection of the law." This bill singles out carriers from all other persons and corporations

and imposes a penalty of an attorney's fee in behalf of certain creditors suing them. There could not in any decision be found language more applicable to every line of this measure than is used by the Justice in applying the law to the Texas statute. [Reads:]

Considered as such, it is simply a statute imposing a penalty upon railroad corporations for a failure to pay certain debts. No individuals are thus punished, and no other corporations. The act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors.

They can not appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favor, they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms.

They must pay attorney's fees if wrong; they do not recover any if right, while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute.

In commenting on the moral view of the question he said: "It is of course proper that every debtor should pay his debts, and there might be no impropriety in giving to every successful suitor attorney's fees." The lawyers around this table all know that in every State this is done. There is a docket fee taxed, but it is for the benefit of all suitors over whom the sovereign can prescribe a rule of conduct. [Reads:]

But before a distinction can be made between debtors, and one be punished for a failure to pay his debts, while another is permitted to become in like manner delinquent without any punishment, there must be some difference in the obligation to pay, some reason why the duty of payment is more imperative in the one instance than in the other.

If it be said that this penalty is cast only upon corporations, that to them special privileges are granted, and therefore upon them special burdens may be imposed, it is a sufficient answer to say that the penalty is not imposed upon all corporations.

The same defect appears in this bill. All corporations within the plenary and exclusive jurisdiction of the Federal Congress do not have this penalty imposed upon them. [Reads:]

The burden does not go with the privilege. Only railroads of all corporations are selected to bear this penalty. The rule of equality is ignored.

It may be said that certain corporations are chartered for charitable, educational, or religious purposes, and abundant reasons for not visiting them with a penalty for the nonpayment of debts is found in the fact that their chartered privileges are not given for pecuniary profit. But the penalty is not imposed upon all business corporations, all chartered for the purpose of private gain. The banking corporations, the manufacturing corporations, and others like them are exempt. Further, the penalty is imposed not upon all corporations charged with the quasi-public duty of transportation, but only upon those charged with a particular form of that duty. So the classification is not based on any idea of special privileges by way of incorporation, nor of special privileges given thereby for purposes of private gain, nor even of such privileges granted for the discharge of one general class of public duties.

But if the classification is not based upon the idea of special privileges, can it be sustained upon the basis of the business in which the corporations to be punished are engaged? That such corporations may be classified for some purposes is unquestioned. The business in which they are engaged is of a peculiarly dangerous nature, and the legislature, in the exercise of its police powers, may justly require many things to be done by them in order to secure life and property.

But a mere statute to compel the payment of indebtedness does not come within the scope of police regulations. The hazardous business of railroading carries with it no special necessity for the prompt payment of debts. That is a duty resting upon all debtors, and while in certain cases there may be a peculiar obligation which may be enforced by penalties, yet nothing of that kind springs from the mere work of railroad transportation.

Mr. TOWNSEND. Is that the unanimous decision of the court?

Mr. FAULKNER. There is a dissent in that case by two of the judges.

Mr. TOWNSEND. You do not understand, do you, that the court is maintaining there that the State or the nation would not have the right to treat railroad corporations as a whole in any manner different from what they do other corporations?

Mr. FAULKNER. Of course I do not. Here there is no classification which justifies a different penalty than that imposed upon other persons or corporations similarly situated. Take the employers' liability bill. There is no doubt in my mind of a defect in the bill, which was passed at a former session, and if it should be passed at this session without correcting that defect, I believe it would be declared unconstitutional. The classification must limit the employees who are brought within the provisions of the statute to those engaged in hazardous employment. There is a clear difference.

Mr. TOWNSEND. I agree with you on that case. I am not arguing against this bill at all, but is it necessary that peculiar regulations must always apply to common carriers because of the peculiar hazardous employment?

Mr. FAULKNER. No; you can make other classification of persons or corporations, for other objects or purposes than that resting on hazardous employment. You can put all of a class for a particular purpose, if it is a natural, necessary classification growing out of the object or purpose of the legislation, and all within your jurisdiction, similarly situated, are embraced by the act.

Mr. TOWNSEND. But the question of hazard does not decide that.

Mr. FAULKNER. Of course not; nor does, as he says, transportation make a proper classification as to penalty for failure to pay. He decides that question.

Mr. TOWNSEND. You are familiar with the taxation cases. There was a case decided not a great while ago, where a State imposes—and many States do that—a specific tax upon railroad properties. That question has been contended in the courts as being class legislation, and the courts have held that it is not.

Mr. FAULKNER. The law brought all within the jurisdiction of the State which passed it within the limits of the influences of it, when similarly situated.

Mr. TOWNSEND. It did not apply to telegraph and express companies, and so on, but simply to railroads. Then they changed that law and said they shall go on the ad valorem basis. Still, the Supreme Court, in dealing with that particular class of property, held that the people have a right to impose conditions that are just and reasonable under those circumstances and that it would not be class legislation, as I maintain this would be.

Mr. FAULKNER. They authorized it because it was a subject which the courts held could be properly classified for the purpose of taxation, but it is not any new principle that the Supreme Court of the United States has passed upon here. The State courts have acted upon it before. You will find that Mr. Justice Brewer has quoted not less than twenty or thirty State supreme court decisions in which they held the same principle as to classification.

Mr. MANN. Does the interstate-commerce law provide for a method of collecting claims through the Interstate Commerce Commission against railroads or common carriers?

Mr. FAULKNER. Yes, and I am not objecting to a collection of a debt. That is not the objection to this bill, but you are imposing a penalty for failure to pay the debt.

Mr. MANN. That is a case where we would give claims against railroads rights which we would give no one else in the land. No one can go before the Interstate Commerce Commission with a claim except the claims against common carriers.

Mr. FAULKNER. There are a number of instances where you give different courts jurisdiction, but you do not give that claim before the Commission one single thing that a court does not give them, which is the damages supposed to be due.

Mr. MANN. Do we not give immunity damages or anything else before the Interstate Commerce Commission?

Mr. FAULKNER. I don't think you give anything but the actual damages. That is my recollection.

Mr. TOWNSEND. I do not want to interfere with your argument, and I agree with a great deal that you have said; but I do not agree with your interpretation, and I do not believe that Justice Brewer would hold that because a railroad would engage men in a particularly hazardous employment that only such regulations as applied to that particular employment could be imposed.

Mr. FAULKNER. Of course he did not say that.

Mr. TOWNSEND. That is the way you read it.

Mr. FAULKNER. He does not say that. He simply says that that does not justify the imposing of the penalty, because they are engaged in a hazardous employment. Then he says further that he does not justify it because they are engaged in the business of transportation. Section 16 of the act to regulate commerce says: "If the petition shall finally prevail, he shall be allowed a regular attorney fee, to be fixed and collected as a part of the costs of the suit." All I have to say is that is just as amenable to my criticism or Justice Brewer's as if it were in this act.

Mr. MANN. It never has been questioned, but I am inclined to think myself that we have the power to regulate that and give to that Commission anything to do in the matter of claims. This is not court jurisdiction.

Mr. BUCKLAND. That is on appeal before the circuit court.

Mr. MANN. That is on the identical case?

Mr. BUCKLAND. The identical case.

Mr. FAULKNER. It is the identical case, but I am satisfied it has not been tested. It would be governed by this decision; there can not on principle be any exception to it.

Now, I will give you another decision which in its principle is equally strong—the case of *Cotting v. Kansas City Stock Yards Company*. (183 U. S., 101 and 102.) This was a case in which the provision of the statute left out in its classification certain other stock yards which could have been brought within it and ought to have been brought within it to render it constitutional. It was declared unconstitutional for that reason. They attempted in Illinois to make an exception, that products in the hands of farmers and live-stock producers should not be included in the prohibition of the act, and for that reason the Supreme Court held it unconstitutional.

Mr. Justice Brewer, in discussing the case, said:

Do the laws secure to an individual an equal protection when he is allowed to come into court to make his claim or defense subject to the condition that upon a failure to make good that claim or defense the penalty for such failure either appropriates all his property or subjects him to extravagant and unreasonable loss? Let us make some illustrations to suggest the scope of this thought.

It does not make any difference in principle whether the amount is very large or small. As stated by the justice in the Texas case, the fact that it was only \$10 attorney's fee involved in that case made no difference; it was just as important to correct it if unconstitutional as if it had been for a large amount.

Mr. MANN. What has been the holding in these cases where State legislatures have provided by law that if the railroad companies did not pay certain claims they should suffer twice the amount? That refers to stock and things of that sort.

Mr. FAULKNER. This is one of the cases, and the Texas case is one of those cases.

Mr. MANN. Oh, no.

Mr. FAULKNER. Yes.

Mr. MANN. I am not talking about the attorney's fee case, but about the other matters.

Mr. FAULKNER. The same principle would apply. There is, however, a distinction that can be drawn. If the legislature has a right to impose a particular duty upon a carrier, it may then impose a penalty for a failure to perform that particular duty.

Mr. MANN. Is not that what Mr. Madison is trying to get at in his bill?

Mr. FAULKNER. I do not think so, because he does not impose it in that form, but simply says that if the party does not admit or deny the liability within ninety days, then he shall pay with the attorney's fee.

Mr. MANN. It simply imposes upon the carrier the duty of answering in regard to the claim in some way in ninety days. If they refuse to answer, the penalty is imposed.

Mr. FAULKNER. In a certain form; either he owes the whole or a part, and if he fails to do that, then the penalty is imposed upon him. You all know, of course, this whole doctrine of the imposing of those penalties, that it is based upon the police power in the State. Now, whether that police power has, by the plenary provision of the Federal Constitution as to interstate commerce, been transferred to the Federal Government has not yet been fully decided by the courts.

Mr. MANN. I did not understand that law to impose it upon the police power, but far from it.

Where Congress has the power to make a provision prohibiting an act to be done under the provision of the Federal Constitution authorizing the regulation of interstate commerce, it has the right to impose penalties for the failure to perform said act or doing said act which it prohibits. The position which I was endeavoring to maintain under the decision in *Railroad v. Ellis* (165 U. S.) was that the statutory provision in reference to interest and fees in the collection of a debt against a common carrier, under the decision of Mr. Justice Brewer, was neither the exercise of a police power in a State nor the regulation of commerce or its instrumentalities under the provision

of the Federal Constitution and that therefore the provision of such a bill was unconstitutional.

Mr. FAULKNER. In the above case that I referred to the justice proceeds:

Suppose a law were passed that if any laboring man should bring or defend an action and fail in his claim or defense, either in whole or in part, he should in the one instance forfeit to the defendant half of the amount of his claim and in the other be punished by a fine equal to half of the recovery against him, and that under such a law, by its terms applied only to laboring men, would there be any hesitation in holding that the laborer was denied the equal protection of the laws? The mere fact that the courts are open to hear his claim or defense is not sufficient if upon him, and upon him alone, there is visited a substantial penalty for a failure to make good his entire claim or defense.

Here is another illustration that brings it under the fifth amendment: Take another illustration: Suppose a statute that every corporation failing to establish its entire claim or make good its entire defense should as a penalty therefor forfeit its corporate franchise, and that no penalty of any kind except the matter of costs to like failures of other litigants, could it be said that the corporations received the equal protection of the laws? Take still another illustration: Supposing a law which, while opening the doors of the courts to all litigants, provided that a failure of any plaintiff or defendant to make good his entire claim or entire defense should subject him to a forfeiture of all his property or some other great penalty, then, even if, as all litigants were treated alike, it could be said that there was an equal protection of the laws, would not such a burden upon all be adjudged a denial of due process of law? This reasoning brings it under the fifth amendment, and for that reason I think the committee ought to be cautious about passing such a statute.

I will pass bill No. 156, and also bill 510, as no one has pressed either. That was the bill introduced by Mr. Taylor.

Mr. ESCH. There has been no hearing on that.

The CHAIRMAN. Mr. Taylor filed a paper, I think, in connection with that.

Mr. FAULKNER. Really it is not a very important bill. Its purpose is to enlarge the pass amendment to families of deceased employees. I think that is the full extent of the amendment under the provision of the bill, which is the reenactment of the first section of the Hepburn Act. That is all I believe it to be.

Mr. MANN. Does it not cover the retirement of employees also?

Mr. FAULKNER. No, it does not; but there is a bill here that does cover that, and I would say in reference to those men that the railroads have really given them and their families passes on a ruling of the Interstate Commerce Commission.

The CHAIRMAN. There is no objection to that on the part of the railroad companies, is there?

Mr. BUCKLAND. Decidedly. This bill proposes that common carriers may issue transportation to families of deceased employees. It would be difficult to estimate what proportion of the population of the United States is represented by families of deceased railroad employees, from railroad presidents down, many of whom are in such circumstances as to be amply able to pay their fare when necessary to travel. The privilege would be open to great abuse, and ultimately would break down the antipass features of the interstate-commerce law, because the public would not stand for the indiscrimi-

nate transportation of families of deceased railroad employees, who might be just as well able to pay their fare as many other people engaged in business, who are obliged to travel on railroads.

The CHAIRMAN. It simply gives the railroad company the privilege of granting passes.

Mr. BUCKLAND. I know, but there is objection to the pressure brought to bear on the part of the families of the deceased employees, which constitutes a considerable portion of the people living on our lines.

Mr. FAULKNER. That is the only objection that I have heard urged to it; and that it is unwise to make separate amendments to this section. I am satisfied there are twenty or thirty bills or amendments introduced for the purpose of enlarging the pass amendment, and they all ought to be considered together.

Mr. RICHARDSON. Has the Interstate Commerce Commission passed upon the feature of the Hepburn law relative to the extension of passes to attorneys and to include their families?

Mr. FAULKNER. Yes, sir.

Mr. RICHARDSON. Do they include the families?

Mr. FAULKNER. They have included the families. Their ruling gives passes to the attorneys who are regularly employed by the year.

Mr. RICHARDSON. How do you connect the families of attorneys with that part of the clause granting transportation to others?

Mr. MANN. They are attorneys by the year and are employees.

Mr. FAULKNER. Yes; and consequently are entitled, with their families, to transportation.

Mr. MANN. An attorney by the job is different?

Mr. RICHARDSON. It says: "Officers, agents, surgeons, physicians, and attorneys." If they were classed as employees why use the words "Attorneys at law" at all?

Mr. FAULKNER. The Commission has made that distinction.

Mr. RICHARDSON. I understood the Commission had decided that families were not included.

Mr. FAULKNER. No; I know that my family traveled on passes.

The CHAIRMAN. It occurs to some members of the committee that this is not very important, because at the most it is conferring upon the railroads the privilege that they may exercise or not as they choose, so that it is not a very important matter.

Mr. FAULKNER. With the permission of the chairman I will ask to attach to my remarks a statement of the vice-president in charge of general traffic on the New York, New Haven and Hartford Railroad on the general subject of bill H. R. 510, and the reasons why it should not be adopted.

(Adjourned at 4 p. m.)

WEDNESDAY, *March 25, 1908—1.30 o'clock p. m.*

At the expiration of the recess the committee resumed its session.

Present: Representatives Hepburn (chairman), Stevens, Esch, Townsend, Kennedy, Adamson, and Richardson.

The committee thereupon proceeded to the consideration of the various bills pending before it concerning car supply.

**STATEMENT OF I. B. RICHARDS, ESQ., SUPERINTENDENT OF
TRANSPORTATION OF THE NORTHERN PACIFIC RAILWAY
COMPANY.**

Mr. RICHARDS. Mr. Chairman, representing the Northern Pacific Company, I should like to point out to the committee as briefly as I may some of the things that would happen on the Northern Pacific road if this bill becomes a law, providing, as it does, for the compulsory delivery to other lines of the owning line's cars.

There could be and have been conditions on the Northern Pacific where, if we were forced to deliver our cars to other lines as contemplated in this bill within three weeks' time, we would be unable to handle the local business along the line of our road. We think, of course, that our first duty is to handle the commodities originating on our line for the people who have located along our line; and therefore we think we should be allowed to use our equipment to that end.

There are a number of things that appear to me to be thoroughly impracticable in letting your cars go through to other lines and imposing a penalty for failure to do so and also a penalty for failure to return them. In the first place, conditions can arise, and have arisen within the last year, making it impossible for any railroad to return these cars. For instance, during the last year on the line I represent, the Northern Pacific, we accumulated a large number of other people's cars which we could not, owing to physical conditions, return, and we were heavily penalized for that in paying per diem charges to the owners of these cars, which we would gladly have avoided if it had been possible to have returned the cars, which it was not.

The CHAIRMAN. In what did the impossibility consist?

Mr. RICHARDS. Weather conditions; also, I may say frankly, a lack of facilities, which we were then providing and have since largely added to, and we are still doing so. But I submit, Mr. Chairman and members of the committee, that no thoughtful man will contend that a railroad running through an agricultural country, such as ours does, can at all times and all seasons of the year furnish promptly, or what you might call with reasonable promptness, all of the cars required by the shippers on our line. That would be practically impossible. If you admit that, then you see the impracticability of penalizing us for failure to do so under conditions which do exist in the fall of the year on our line, and at some other times of the year.

The CHAIRMAN. Is not that the implied contract that the company has assumed—to furnish reasonable facilities?

Mr. RICHARDS. Yes, sir. The question would be, then, what you consider reasonable. For instance, if the price of wheat went from 80 cents to \$1, every man along the line of our road who owned a bushel of wheat would want to market it. It would be impossible for us then to furnish, within what would be called a reasonable time, cars for all of those who had wheat to offer. That would be physically impossible.

The CHAIRMAN. In such a case as that, what would be your idea of a reasonable time?

Mr. RICHARDS. That would depend entirely on the conditions that existed and what amount of grain or other commodities might be offered at that time.

The CHAIRMAN. Take the ordinary condition that you have suggested. You know the quantity of wheat in that country, or practically the quantity. Suppose that wheat goes from 80 cents to \$1 in the month of November, what would be a reasonable time for you to furnish facilities for getting out that wheat?

Mr. RICHARDS. I have known conditions, sir, where, with a reasonable amount of equipment on hand, with plenty of locomotive power, such as we in our judgment consider necessary to move the crop, it has taken thirty days to get around to a specific shipper to furnish him any considerable number of cars (that is, on the plan of furnishing first those who come first—first ordered, first served), even last year.

The CHAIRMAN. Is that the rule?

Mr. RICHARDS. The rule is to fill orders in their turn; yes, sir. We have specific rules to prevent a discrimination (or, rather, an unjust discrimination) against any shipper. That, in my opinion, is the solution of the whole problem; because a railroad company must and will, for its own personal interest, provide all the equipment it can get for the business it has to move. That is true of our railroad. We have spent as much money as we could spend within the last two years to purchase equipment, and we have largely increased our equipment. That may not be true of other lines, but I want to point out to you, Mr. Chairman, that the evident intent of this bill—

Mr. KENNEDY. Let me make this inquiry right there: Suppose, on a given day, you should have requisitions for a thousand cars from four or five different shippers at perhaps the same point, would you give all the cars asked for to the first one that asked for the cars?

Mr. RICHARDS. No, sir; we would prorate the cars.

Mr. KENNEDY. I knew that was the practice at the heavy shipping points around Pittsburg.

Mr. RICHARDS. Yes, sir; and we have a specific set of rules which we apply to that to prevent a discrimination in the distribution of such cars as we may have. We know that at certain seasons of the year we will not and can not have enough cars to furnish cars to all comers when they want them.

Mr. KENNEDY. I thought you said that you supplied them in the order in which they asked. You know, of course, that you could not get those orders in at the same time. One would come ahead of the other, naturally.

Mr. RICHARDS. I misunderstood you, or, rather, I answered you wrongly there; because we prorate the cars among the different shippers at the different stations.

Mr. KENNEDY. According to the several needs, you would divide up all the cars available?

Mr. RICHARDS. Yes, sir. I should like to file, if you please, Mr. Chairman, a copy of those rules under which a shipper can not be discriminated against.

(The paper above referred to was directed to be made a part of the report of the hearing, and the same is as follows:)

RULES GOVERNING THE DISTRIBUTION OF CARS AT STATIONS.

NORTHERN PACIFIC RAILWAY COMPANY,
OFFICE OF SUPERINTENDENT OF TRANSPORTATION,
St. Paul, Minn., July 15, 1907.

All concerned:

1. The intent of these rules is to secure a fair distribution of equipment between shippers and will be effective August 1, 1907.
2. (a) Each station will open an account with each carload shipper by classes of cars and record all car orders and cancellations in a book provided for that purpose.
(b) This record for nonagency stations will be kept by the agent especially assigned by the division superintendent to do so.
3. Agents will require shippers to file orders for cars over their signatures on Form 524 (F 5), which is provided for that purpose, and will give each order a number.
4. Agents will transmit to superintendent's office and record all car orders whether cars are on hand to apply or not.
5. Division superintendent will arbitrarily cancel all unfilled orders at 6 p. m. Saturday of each week, and agents must check and reorder on that day, giving reference to date originally ordered. (Shippers will not be required to renew orders.)
6. Agents must, before accepting orders for cars, satisfy themselves that the shipper ordering has loading and can load the number and capacity of cars ordered within the time specified.
7. Where any shipper's orders for cars exceed his capacity to load the distribution will be made on the basis of his capacity to load. Where the order for cars is less than his capacity to load the distribution will be made on the basis of cars ordered.
8. For commodities which in loading reach the weight capacity before the cubic capacity is reached, such as grain, ore, etc., cars will be distributed on weight capacity basis; on other commodities on a cubic capacity or car basis.
9. Except as may be especially directed for certain commodities in certain territories, orders for cars (except stock cars when ordered for live stock) will be filled as follows:
(a) One car each class, to each shipper according to date of order until each shipper receives one car each week, or as soon as they can be supplied.
(b) If, after supplying each shipper one car as above, there are more cars to distribute during any week, the balance will be apportioned among the shippers in same ratio as such shipper's car orders bear to the total cars ordered by all shippers at the station.
10. Each grain elevator, grain warehouse, lumber or shingle mill, will be considered as an individual shipper.
11. If a class of car different from that ordered is substituted the record of cars ordered must be changed to the class substituted, and distribution will be the same as if of the class ordered; record must, however, show class of cars actually furnished.

STOCK SHIPMENTS.

For the reason that entire shipments of stock must be loaded at the same time, stock cars for stock shipments will be distributed on following plan:

1. Each applicant will be required to place written order as per rule 3, above.
2. Priority in date and time of filing order will not be considered except that if two or more orders are received to load on a given date priority will be given according to date and time of filing for such given date only.
3. Any shipment not ready to load on date ordered will be considered as canceled and if replaced to load on a future date will rank behind all orders previously placed for such future date.
(Agents may allow forty-eight hours' grace when assured stock has been delayed account stress of weather or conditions which shipper could not control.)
4. If cars not available on date ordered to load, all orders so delayed will retain their relative position until filled or canceled.

I. B. RICHARDS,
Superintendent Transportation.

Approved:

C. M. LEVEY,
Third Vice-President.

Mr. RICHARDS. In answer to your question, Mr. Chairman, I want to tell you of the condition that existed on our line two years ago, when the price of cattle went up suddenly. We handle a great deal of range cattle to the Chicago market after it comes from Texas and feeds in Montana. The price rising suddenly, or the demand in Chicago increasing, for instance, makes every man who owns cattle offer it to us very quickly, and we are unable in times like that to furnish all of the cars they want immediately, although we have moved as high as five and six hundred carloads per day. Yet, two years ago, for a period of about six weeks, there were 1,200 carloads of cattle awaiting shipment along the line of our road to points as far west as the Montana and Idaho State lines. Yet during that period we were moving very promptly all the way from three to five hundred carloads of cattle per day, and running the cars back empty from Chicago, in order to facilitate that movement. It might be considered that we were discriminating against other commodities in running the cars back empty when they could have been loaded with coal. But realizing the nature of the commodity, and the necessity for moving it promptly, we did those things.

The CHAIRMAN. What month was that?

Mr. RICHARDS. That was in September, October, and November. Those are the months in which the range cattle move. And bear in mind that that occurs at the time that the wheat is being marketed. The cattle and the wheat move at the same time. In the beginning of the wheat season, or during the summer months, when we have a surplus of equipment, as we have now, we begin to put that equipment into the wheat territory, or into such other parts of the land as we know, in reason, it will be required when the harvest is over.

The CHAIRMAN. Were the months that you have named months in 1906?

Mr. RICHARDS. Yes, sir; in 1906. The farmer, storing his wheat in the elevators, does not ship it until the price suits him. Sometimes they may fill up the whole of the elevators all over our line; so that when the price is right they will load more wheat in one day, if we have the cars placed (and we usually do at the beginning of the season), than any ordinary equipped railroad could move in three weeks, or possibly more. That was the case when Commissioners Lane and Harlan visited the Northwest two years ago, I think it was, Mr. Chairman—the fall of two years ago; the fall of 1906.

As I understand, one of the objects of this bill is to force certain railroads to purchase sufficient equipment to handle the business over their lines. I want to point out to you that it will have an exactly contrary effect. For instance, there is a road that connects with our line from Minneapolis, running to a point in Iowa, connecting with the Illinois Central, I think. That road receives business from the Northern Pacific, and in return receives it from the Illinois Central to the Northwest. I would like to say to you that if I owned that road to-day, and had an order in for 5,000 cars, and knew that this bill was to become a law, I would cancel the order for that equipment, knowing that these two railroads and others connecting on both sides would be obliged, under its terms, to furnish me all of the equipment I needed for the through business, leaving what I had to do my local business.

Mr. STEVENS. Would it not require a certain minimum amount of equipment to make the exchanges under the provisions of these bills?

Mr. RICHARDS. A road situated as that one is, sir, could, when the Northern Pacific delivered it a car, get that car from the road on the other side of it, and pay the debt with that; or, failing to get the car, it could collect the penalty from the other road and pay the northern line, or vice versa. That could be done very simply under this law.

Mr. STEVENS. That would only apply to short intermediate lines; would it not?

Mr. RICHARDS. Not necessarily so. It could apply to roads running between St. Paul and Chicago, connecting with the eastern lines, for instance, the Chicago, Burlington and Quincy, or the other nine roads that run in there could do the same thing with the north and the east lines. .

Mr. STEVENS. But the transcontinental roads could not do that?

Mr. RICHARDS. No, sir. We would be obliged to furnish this road the equipment.

Mr. STEVENS. And the eastern trunk lines could not do that?

Mr. RICHARDS. No. They, in turn, would be obliged to supply the equipment to the intermediate lines between any two great centers, such as the east and the northwest.

Mr. STEVENS. Why is it that the roads have from time to time changed their per diem for keeping cars? What is it now?

Mr. RICHARDS. It is now 25 cents per day. It has recently been 50 cents per day. During the past eighteen months there has been a very large demand for cars, and this additional price was put on to stimulate the return of the cars. It had, I may say, no appreciable effect when the cars were needed. Neither would your rate of \$1 per day affect that much, because a road which really needed the equipment could make ten and twelve dollars a day on each car. Therefore such a penalty as that would not bring the cars back.

Mr. STEVENS. Then why did you reduce it to 25 cents?

Mr. RICHARDS. Because now there is no demand for the cars; and in a way to prevent the hauling of the cars empty unnecessarily the rate was reduced. Some of the roads would still like to have the higher rate. Others prefer the lower rate. The majority preferred the lower rate; therefore the rate was reduced. And I would like to point out to you that the Northern Pacific (and I think this is generally true of all other railroads similarly situated) build equipment of such specific dimensions as best suit their requirements. For instance, we have built a large number of cars of a specific cubic capacity to handle shingles, a large commodity originating on our line. To be forced to turn that particular kind of a car loose on some eastern road that does not require that size car, either as to cubic or weight capacity, and take in return a class of equipment not suited to our business would work a hardship on us beyond anything you could mention.

There is also this point: If we deliver one of our 80,000 or 100,000 pound cars to some of the eastern lines, they have a larger proportion of 40,000 and 50,000 and 60,000 pound cars; and to deliver one car of 40,000 pounds capacity for one of 100,000 pounds, or that much difference in cubic capacity, would be absolutely unfair to the line delivering the larger car. If, for instance, you ruled that we

had to deliver an equal capacity; it would take two cars, and the road receiving two cars would be penalized to the extent of the difference in the per diem charges on two as against one car, which is also unfair.

In other words, I would like to point out to you that an interchange of equipment is a vast thing in this country between the railroads; that the railroads themselves for the past five or eight years, to my knowledge, have been trying to solve this problem by annual and semiannual conventions and have not as yet been able to lay down rules which will make it fair between all of the roads. When cars are not needed, as at present, all roads are perfectly willing to let their cars go. In fact, they are anxious to do so. I do not think there is a single road in this country to-day (that I know of, at least) that is not willing to let its cars go anywhere. But when the fall months come on, and they owe a duty to the people located along their lines who have invested their money either in farm lands or other industries, they feel, and I think you gentlemen will agree, that it is their duty to protect those people. To do that it is necessary to retain your equipment to a certain extent; at least to the extent necessary to provide all the cars you possibly can use for their benefit.

Mr. STEVENS. Under your argument, then, you would not let the cars go off your line?

Mr. RICHARDS. Not at certain seasons of the year—at least, not to an extent which would injure industries located along the line of our own road.

Mr. KENNEDY. Does it not embarrass the movement generally over the country to have cars unloaded at the connecting points?

Mr. RICHARDS. Why, it does; I must admit that it embarrasses the movement to a certain extent, but not nearly so much so as to let the cars go away when you can not get them back for use on your own line.

Mr. KENNEDY. The idea of this bill would be to prevent that embarrassment in the general movement of commerce, if that is a wasteful method and adds to the labor and the cost of moving commerce, and if there is any way by which we can devise some plan to obviate that and still not wrong any road.

Mr. RICHARDS. I understand your object, and it is a very praiseworthy one, sir; but this bill will not accomplish it.

Mr. KENNEDY. Then can you not suggest something that will? Is there no way? Of course this bill is a bill that is before us for amendment and change and modification. Take the road you mentioned, that you said would favor this bill and would not order cars—would not some provision providing that they should send them back as promptly as they could remedy that?

Mr. RICHARDS. If, sir, that could be done, your bill would be all right. But conditions will arise, physical and weather conditions, or what not—there are a thousand different things that would make it impossible for that to be done by this, that, or the other succeeding road that the cars go through.

Mr. KENNEDY. Of course I suppose every road feels an obligation to the people living right along the road; but the duty of a common carrier is to take all commerce that is offered, and to treat all alike, favoring none. The commerce that comes at the end of your route, which is tendered to you by a connecting line, you are bound to take.

Mr. RICHARDS. We would take it as the law stands now; we do so at present.

Mr. KENNEDY. And you are bound not to favor any shipper that lives along your own road.

Mr. RICHARDS. Neither do we, sir; except that we feel we have a right to keep on our own rails our own equipment, purchased and built especially to handle the commodities on our line, to the extent that they are needed. Yet even in the heaviest times our road has always been willing (and I feel sure other roads are willing) to interchange cars freely with other roads where the conditions are known to be favorable to their return. No railroad will fail to do that. The trouble is that you can not tell when those conditions are going to be right until it is too late and your cars are gone. As I frankly admitted to you, within the past two years the Northern Pacific road kept other roads' cars when the other roads needed them, because they could not return them, and paid large penalties for doing so. I will ask you to consider if that could have been done and was not done whether I would be here talking to you to-day or not.

Mr. ESCH. If the system of car exchange, in your opinion, is impracticable, what do you say about the provision for a minimum speed limit as provided in some of the bills pending before us?

Mr. RICHARDS. It is far more impracticable, I think, sir, as I believe I can demonstrate to your satisfaction; and on that point I want to refer to some testimony offered before the Senate committee on this same bill by Mr. Cowan, who read from Mr. Lane's report on his visit to Minneapolis in the fall of 1906.

A superintendent of the Northern Pacific at that time testified before Mr. Lane, and was misunderstood. He said that fifteen days was a reasonable length of time in which to move a car 350 miles, meaning from Fargo, N. Dak., to Duluth, and referring to grain, through two terminals. The conditions at that time were something like this: There were very severe weather conditions, such as had not been known in the Northwest for a great many years. We had several thousand carloads of wheat which had been loaded into cars which were previously stored in that country at the beginning of the season; and we were unable to move those cars. As a matter of fact, it only took a number of hours to move a car of grain from Fargo to Duluth—not fifteen days. What this man meant was the average of all cars loaded there, taking out the first cars loaded and moving them in their turn, without discriminating against any particular shipper. In that way he was right, because fifteen days was a fair average under those conditions in which to move a carload of grain from Fargo, N. Dak., to Duluth. But that gentleman was misunderstood in his testimony, and Mr. Cowan used that to our disadvantage before the Senate committee. I therefore take this opportunity of correcting that, Mr. Chairman, if you will permit me. That is what the gentleman meant—the average, and not the specific movement.

Under certain conditions (answering your question more specifically), an average speed of 10 miles per day would be very good. I should regret to see any conditions like that on our line again, but they have existed, and they may exist again any year, if things come around exactly right. For instance, they would exist if grain should suddenly rise in price, or that would be true of any other commodity if the market conditions were just exactly right, and everybody

wanted to ship at one time. So that when the equipment is short, the only thing we can do is to see that no particular shipper is discriminated against unjustly, and that is what we attempt to do.

Another point against this bill is that you impose a penalty for failure to furnish a car for interstate business that is going to points off our line. If a certain shipper overstocks or overships himself to a point beyond us (say two or three roads beyond, like grain for Buffalo, for instance, where that grain can not be handled), he may ship it faster than the facilities at that point can handle it; but we are still obliged to continue to furnish the cars, thus putting them out of business, although some one pays the penalty for it. The industries located along the line of our road suffer when that is done, because we are forced to furnish cars to a man that we know can not handle them to advantage. We might legitimately wait thirty or sixty days before furnishing cars for this particular commodity, because we know the conditions beyond, and we know that they can not be handled there. But if this is done, the cars will be put out of business for the use of our shippers on our own lines, and we will not be able to prohibit it.

Mr. KENNEDY. Would not this bill put those roads that receive from you, nearer Buffalo, in a position where they would have to send you word to call a halt if they could not return the cars promptly?

Mr. RICHARDS. They could not do so. We would not be permitted to stop under the law. They would have to pay their penalties. They would be penalized by something we could not help, and in turn the shipper, of course, would have to pay demurrage.

Mr. KENNEDY. I have not all the provisions of this bill in mind; but my impression is that there is a provision there to the effect that cars shall be returned within a reasonable time.

Mr. RICHARDS. The provision is there, sir; but that will not change the conditions which may exist.

Mr. KENNEDY. But the conditions, you know, would determine the "reasonable time." A return within a day or two might be a reasonable time in one case; but in the case you have supposed the conditions would make a reasonable return a much longer time.

Mr. RICHARDS. But that only provides for the return of cars. That would not allow us to refuse to furnish a car to the man who ordered it from us to go to its destination. We must furnish him his car as provided by the law; and in doing so, while the penalties apply all along the route, the car is out of the service of the other shippers.

Mr. KENNEDY. The expression "reasonable time" is in the law at both ends of that provision. You must supply a car to him within a reasonable time. If you knew what the shipment was to be, and you knew that his shipment could not reach its destination, that would affect what would be a reasonable time in giving him the car.

Mr. RICHARDS. But some other gentleman might not interpret the law in just exactly that way.

Mr. KENNEDY. You would have a reasonable Commission to interpret that provision.

Mr. RICHARDS. Yes.

Mr. KENNEDY. It is plain what they would hold. If the shipper's wheat would not reach its destination in Buffalo any quicker by reason of a hurry-up delivery of cars to him, that would materially affect the interpretation of what a reasonable time would be.

Mr. RICHARDS. It would, as a matter of fact; it certainly should, because we should not be obliged to furnish our cars where they will be taken out of service. On the other hand, because of the mutual relations between the railroads and the shippers, it is our duty to get out of every car every mile possible per day. If we fail to do that, we injure materially not only ourselves but also every shipper along the line of our road who needs a car to ship his produce. Anything that tends to reduce the number of miles a day that we can make of those cars is certainly an injustice to both the railroad and the shippers along the line of the road.

The CHAIRMAN. What is a reasonable rate of speed per hour for a freight train under favorable conditions in your line of trade?

Mr. RICHARDS. An average of 10 miles per hour for a freight train is considered a reasonable rate of speed. That is an average. In order to maintain that average a freight train would have to run 25 to 30 miles per hour.

Mr. KENNEDY. You mean that average, too, from the time the train starts on its journey until it reaches its destination?

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. What are your heaviest grades?

Mr. RICHARDS. Our heaviest grades are 2 per cent, over three ranges of mountains. Of course the average speed in that territory would be reduced; but the average for the whole line, taking in all the grades, is very close to 10 miles per hour. If we could maintain that we would have no complaint from any of our customers at all; and at present we have none. It is only in the congested times that we have such complaints as we had last year, and which brought Commissioners Lane and Harlan to Minneapolis.

I should also like to point out the fact that while the railroads, in order to comply with this bill, would be obliged to furnish or purchase more equipment than could be reasonably expected of any railroad, yet nothing is said to the shipper and the receiver, who are probably more to blame for a congestion or a shortage of equipment than the railroads themselves. The coal shortage in the Northwest was due almost entirely to a failure on the part of the receivers and shippers to move that coal ahead of the time it would be needed. All of them waited, in order to keep the money out of the commodity as long as possible, until they thought they would actually need it. Then the extremely severe weather conditions came on us, with the result they all wanted to ship at once, which is impossible and will always be impossible under certain conditions. As I understand it, this bill intends to cure such conditions as that. But you can not cure it by imposing the penalties. You must change the conditions. Penalties will not do it; and the railroads can not change the conditions.

Mr. KENNEDY. Suppose each railroad now had cars enough to furnish to shippers on its line, and then we had some provision requiring that cars should be promptly returned to that road. Suppose it had cars enough now to load all the products that are ordinarily offered for shipment on its line. Then, under this bill, when a car would move off that line on to another line it would either have to immediately return that car within a reasonable time, without unnecessary delay, preventing it from going off and being diverted in some other direction, or else it would have to give an equiva-

lent to the first road in exchange. It is impracticable, of course, to unload all the cars at the connecting points.

Mr. RICHARDS. If you can work out some plan like that, sir, the railroads will jump at it. It would be a life-saver to the railroads. But we contend that it is thoroughly impracticable and impossible of accomplishment, because of conditions which exist. For instance, no road could maintain at its junction points with all other roads a sufficient amount of equipment to pay these debts as they come to them, without serious inconvenience and delay.

Mr. KENNEDY. Suppose, then, we put into the bill a limitation that in the event that one road does not give an equal car capacity to the other road promptly upon exchange, it is bound to return the specific car it receives within a reasonable time?

Mr. RICHARDS. If they could do that, sir, if there were no conditions which made it impossible for them to return that specific car, it might be better. But I know, and all railroad men know, that within the last two years conditions have actually existed, and for a long time at a stretch, under which it was impossible to return those cars, notwithstanding the fact that the railroads had done everything they could to provide facilities, and had spent lots of money in improvements. For instance, the Northern Pacific moved more dirt in the summer months of last year in providing additional facilities than was moved in the Panama Canal, and they appropriated money to spend for these improvements which they could not spend. They could not purchase the labor, and they could not get the material, and various other things. That work is still going on, on the line of our railroad, at this time.

The CHAIRMAN. Some gentleman has said here that the average movement of the cars on the roads of the United States was less than 25 miles a day. Let us suppose that to be true, and suppose that there was an increase of that speed to 50 miles a day; would that fact have relieved the congestion of last year?

Mr. RICHARDS. It would nearly, if not quite, have done so. If we could get an average of 50 miles per day from these cars—well, I would not say that it would have entirely removed it, but it would nearly, if not quite, have done so.

The CHAIRMAN. With proper management and proper concert of action upon the part of the railroads, what is there to prevent the movement of those trains at least 50 miles a day, or 2 miles an hour—half the speed of a common road wagon?

Mr. RICHARDS. Let me demonstrate that to you by saying that in the early days of the line I represent their business was in one direction. They hauled a load one way and hauled the car back empty, because the country was being developed at that time. A movement like that can be made at a greater average speed than where you load the car in both directions, because you must then add to the time consumed in the movement the time required for reloading the car. Last year the conditions on our line were more nearly equal. Something like 57 per cent of our business was westward or eastward, I forget which, and the balance of the 100 per cent was in the other direction. That reduces your average, because it takes a longer time to load and to unload the cars, and you can not move them back in solid trains of empties to the source of the load as you can when the business is all in one direction. In the grain season, as I tell you, we

store all of our cars in the wheat territory, and they load them up so fast, owing to the conditions, the grain all being in the elevators, that they load in one day more than a railroad like ours (and we call it a first-class line) can move in three weeks' time. If you add that to your time, the last carload of a day will stand three weeks, and that will tend to reduce the number of miles per car per day. It is due entirely to the conditions, sir, and you can not eliminate them. On the arrival of that car at destination the same conditions will exist, making it impossible to promptly unload it. Lots of the dealers have their grain shipped in and sell it after it gets in. They reconsign it. Time is consumed (one or two days) in reconsigning, and the car goes to some other point, all of which tends to reduce the number of miles of the car per day.

Mr. ADAMSON. I suppose your greatest and most uncertain cause of delay is having to meet trains going in different directions?

Mr. RICHARDS. On a single-track road that is a very large part of the delay.

Mr. ADAMSON. Does not your delay and your loss of time increase, where there is a large number of trains, out of proportion to the increase of trains?

Mr. RICHARDS. Yes, sir; the ratio is four to one.

Mr. ADAMSON. The increase in the delay is out of proportion to the increase in the number of trains?

Mr. RICHARDS. Yes; as the number of trains increases the meeting points increase about fourfold, or probably more than that. But any railroad could be fairly required to provide a double track where conditions like that require it. Our road has done so. Those we consider reasonable facilities. But it takes time to do even that. Even though they are perfectly willing and have the money to do it, it takes time to do those things.

Mr. ESCH. In the evidence before this committee it was stated that one of the great causes of delay in shipments and receipts was due to the theory of the tonnage haul, and I understand that Mr. Hill has developed that system very highly upon his line. That is to say, you have an engine of the largest capacity and you wait until the capacity of that engine is met by the shipments on the line. Is that or is that not a cause of delay?

Mr. RICHARDS. I should say, on the contrary, that it was a very good cause of avoiding delays.

Mr. ESCH. Just explain that.

Mr. RICHARDS. For instance, at the time Commissioner Lane was in Minneapolis these conditions existed, and the testimony along that line was taken at that hearing. I was present all through it and heard all the testimony. At Fargo, N. Dak., we had ready for movement to Duluth, where the elevators are principally located, something over a thousand cars; I forget the exact number. There was plenty of tonnage there for all the engines we could get around, and it remained that way for a number of months. I submit that it would simply have added to that congestion to start a train out of that terminal with less load than it could haul and make an average speed of, say, 10 miles an hour, which is considered very good.

The CHAIRMAN. Yes; but you never would do that under such conditions, because there is no delay there. You are not waiting for cars; they are there, where you have got a thousand cars at Fargo.

Mr. RICHARDS. As I understand the gentleman, he is speaking of the conditions that existed during the congestion.

Mr. ESCH. Well, at any time; I do not care when.

The CHAIRMAN. But you are speaking about a concrete case.

Mr. RICHARDS. Assuming that we had no congestion, any railroad using good business judgment would not run a train until it had a load for it. In other words, you would not go to a mill with half a load when you had a whole load to go. No prudent business man would do that. But it is not true that we delay our trains by overloading them. For instance, we do not anywhere near approach the theoretical rating of our motive power. No railroad does it, much less the Northern Pacific.

The CHAIRMAN. But you will keep a half load waiting perhaps for days for the other half?

Mr. RICHARDS. Oh, no, sir. It is not necessary to keep those trains waiting more than a part of one day to get a load. It depends altogether on the nature of the commodity.

The CHAIRMAN. But you do hold them, under the tonnage system, until you get the load?

Mr. RICHARDS. Why, sir, they have always done that under any system, whether it be the tonnage system, or the car system, or any other system.

Mr. ESCH. Was it done under the old system, before you got your 80 and 90 and 100 ton engines, when fifteen or twenty-five or thirty cars made a load? You probably had more trains, and the expense of operation would be more, because you would have to have more train crews.

Mr. RICHARDS. It does not follow, sir, because when they rated by cars they tried to get just as near to the capacity of the engine as they do under the tonnage system. The only difference is that under the tonnage system you can more nearly get to the rating of the engine than by estimating the weight of a car. It does not follow at all, sir, that it makes any difference. As a matter of fact, it does not make any difference.

Mr. KENNEDY. If it is true that adding a great number of trains is in itself a cause of delaying those trains, would it not be better to get a full load than to have two engines attempt to haul the same tonnage in two trains?

Mr. RICHARDS. Exactly so, because the meeting points then multiply at a greater ratio, so that the smaller the number of trains you can put on your tracks the better time they will make.

Mr. KENNEDY. So that the delay which is involved in getting a full load might really expedite the completion of the work?

Mr. RICHARDS. Exactly so; exactly so. That, of course, is clearly true when there is a congestion.

Mr. ESCH. Is it true, for instance, as to the shipment of stock? Is it not true that they often wait until they get a full train load of stock?

Mr. RICHARDS. Not on our road.

Mr. ESCH. Not on your road?

Mr. RICHARDS. No, sir. That has largely regulated itself, because range stock shipments are made in train loads.

Mr. ESCH. And on special days?

Mr. RICHARDS. Not necessarily.

Mr. ESCH. And on certain trains?

Mr. RICHARDS. On special days, because the shipper wants to get to his market on a certain day, but not because the railroads exact it. In other words, we could make better use of our stock equipment if these shippers would ship their stock all through the week and not hold off until certain days in order to reach the Chicago market on a certain day. That in itself causes a congestion, because all of them want to ship on a specific day. That gives us four or five days in the week when the equipment stands idle—some of it at least. Then we have to break everything to pieces to get them in and get back for the next shipping days. So I say that the shipper and the receiver has not been doing anything along the line of relieving this congestion, although he is more largely responsible for it than the railroads themselves.

Mr. KENNEDY. If this matter of the exchange of cars is left entirely without legislation, is it not possible for one big, strong road to treat unfairly a little one in the matter of competition for business?

Mr. RICHARDS. Why, you could, of course, refuse to let your cars go to any other road as it stands now; you could demand a transfer. That is what we do when the conditions require it.

Mr. KENNEDY. Are there not times when those transfers ought to be demanded, in the interest of commerce generally?

Mr. RICHARDS. I should say yes, in the interest of commerce generally, and that is true also in the interest of the railroads generally. If you could do this business without transferring the equipment it would be a very fine thing to do, sir.

Mr. KENNEDY. Do you not think it would be possible for us, without harming anybody, to formulate some legislation defining those conditions when railroads ought not to insist upon transfer?

Mr. RICHARDS. I do not think you will find it necessary, because when those conditions exist, as they do at the present time, no road demands a transfer, and all the cars are going through. The Northern Pacific road stands ready, and has for several months, to let its cars go to any part of the United States, and we are doing it now. So that those things regulate themselves.

Mr. KENNEDY. Oh, yes; at a time like we had recently I suppose you would be glad to get rid of all of your cars and get them to work.

Mr. RICHARDS. We would indeed. We would right now. We are doing all we can to let those cars go through. But when it comes to the fall months, when the grain shipper and the stock shipper and everybody else who has his money invested largely in industries located along the line of our road wants to get his product to the market, we feel that it is our duty to take care of those people.

The CHAIRMAN. In this period that you spoke of a little while ago, the fall months and early winter of 1906, when there was danger of a coal famine, and very many complaints were being made in the newspapers, the excuse that then was made was that the railways reaching Chicago would not allow the use of their cars beyond that point. Was that true?

Mr. RICHARDS. That was not true; because I have just told you, Mr. Chairman, that we had a large number of cars belonging to lines east of Chicago, and we could not send them back. It was true that because of that, however—

The CHAIRMAN. I mean cars loaded with coal.

Mr. RICHARDS. No cars loaded with coal come to St. Paul. That is as far as the market goes for eastern coal by rail. The most of the coal for the Northwest comes to the head of the lakes, and originates upon our own line.

The CHAIRMAN. Did you have difficulty in getting the cars of your connecting lines to move coal westward at that time upon your line?

Mr. RICHARDS. No, sir. No coal moves over our connecting lines in that way; but we would not have had if it had been moving that way. Practically all the coal for the Northwest, beyond St. Paul and Minneapolis, is loaded at the head of the lakes, comes in via the lakes, and is unloaded on the docks and then moved out by rail. There is a small amount of coal coming through in cars from Pennsylvania, but generally it only goes as far as the Twin Cities—not to the interior; not to outside Minnesota and Dakota points. But the coal would not be considered a transferable commodity. It would run through in cars, because in the case of immediate connections, you understand, we know their conditions, and we regulate that matter ourselves. Some roads would let their cars come through when they went to certain points on our lines, when they could convince themselves that our conditions were such that we could return them. But they would not let their cars be loaded to go to a point on our line where they knew the conditions were such that we could not return them whether we wanted to or not.

The CHAIRMAN. A little while ago, while insisting that your company was doing everything that it could to facilitate stock shipments east, you said that in order to have your cars at this point promptly during those months you sent the cars empty westward in order to meet the demands of the cattle shippers.

Mr. RICHARDS. We did during that period of six weeks, sir, when there were such large shipments of cattle waiting along the line of our road. The prospect of getting out of feed was such that we did discriminate against the other commodities, but we believed not unjustly so, because the cattle would perish.

The CHAIRMAN. And the people would not?

Mr. RICHARDS. There did not anybody perish there. We were able under those conditions to take care of everybody, and we did. We were able, I am glad to say, to get enough coal into that country to take care of everybody, although the weather conditions were very fierce.

The CHAIRMAN. And the complaints as voiced by the newspapers were certainly very loud.

Mr. RICHARDS. Very loud; yes, sir—very loud, though not always justified. It was more of a scare than anything else. It was a matter of fear of getting out of fuel; not that any of them really got out. But there was the grave fear that they would get out, and of course men complain pretty loudly under such conditions; and they did. But there was not anybody frozen to death along the line of our road. We kept a daily account of the number of tons of fuel at every station along the line of our road, and undertook to see that they got coal when they needed it, no matter who it belonged to. We confiscated it and put it into the places where they really needed it and made up for it afterwards. In other words, we constituted ourselves a relief committee and took care of the people, as we would do under any similar conditions.

I want to make another point, and to impress it on you if I can, that in running your cars through you must consider the capacity of the car; that no road could afford to take two small cars in exchange for a large one and pay the additional per diem charges on the second car. That would be absolutely unfair; and it imposes other hardships on the railroad. For instance, there is the element of damage to the two cars as against one. A road like ours, which has invested its money in up-to-date equipment, does not want to have to trade it off for equipment that is old, badly dilapidated, and easily demolished, and have to pay the price for destroying such cars, and let the other road use our good cars that we have provided for our own people and for the business originating on our own line.

Mr. ESCH. Is the percentage of good, large, and new cars on your line greater than on your connecting carriers?

Mr. RICHARDS. It has been, sir, in all figures that I have looked up.

Mr. ESCH. Is that true as to coal cars?

Mr. RICHARDS. That is true as to box cars. We haul coal in box cars, largely.

Mr. ESCH. It is not true, however, as to coal cars, is it?

Mr. RICHARDS. I do not think so, because the coal-carrying roads have made a specialty of that; but it is true of box cars.

Mr. ESCH. Only as to box cars?

Mr. RICHARDS. I think only as to box cars.

Mr. ESCH. Is it not true as to stock cars?

Mr. RICHARDS. No. Our stock cars are uniformly 36 feet in length, and I do not think any road uses any cars to any considerable extent of less length than that now. There are some 34 feet long; but usually almost all of the stock cars all over the country are not less than 36 feet in length.

Mr. ESCH. Do you have your own make, or do you use Street's patent?

Mr. RICHARDS. We own our own stock cars. We built 1,000 last year, and we are considering now the building of 500 more.

The CHAIRMAN. What is the average length of a freight shipment on your line?

Mr. RICHARDS. The last figures I saw, sir, were about 350 miles. What we call the average haul was about 350 miles. That is considerably greater than on most other roads, because we have a long, direct route.

That is all I have to say, Mr. Chairman.

STATEMENT OF JAMES PEABODY, ESQ., STATISTICIAN OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY.

Mr. PEABODY. In order to prevent rambling, and to be as direct as possible in my remarks, I have reduced what I have to say to writing. But I shall be very glad to have any members of the committee (as I see they are perfectly free to do) ask any questions at any time, interrupting at any point; and I will endeavor in that way to give you as clear a statement as I can of the conditions that exist in our part of the country.

While I shall not attempt to discuss before this honorable committee the legal aspects of the so-called Culberson bill (H. R. 13841), but leave that to gentlemen far more competent than myself, there is one

clause which it appears to me can not be defended for the reason that it imposes an impossible obligation, to wit:

To provide and furnish transportation, as that term is defined in the said act of June 29, 1906, for all interstate and foreign commerce offered, tendered, or to be offered or tendered to it for shipment, within a reasonable time after demand therefor made by any shipper of such freight desiring such transportation; and to supply within a reasonable time at its station or stations from which such shipper gives notice that he desires to ship such freight, at the date designated by such shipper where that is within a reasonable time, sufficient suitable cars in which to load the same, and to promptly transport the same to its destination when destined to points upon the line of such railroad receiving such freight, and if destined to points beyond the line of such railroad, then to promptly transport and deliver such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made, or to be made, for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to the connecting line or lines forming any part of the route over which the same is to be transported to its ultimate destination.

The fundamental error in this connection is the assumption that it is the duty of a common carrier to provide facilities for transporting all of the traffic which any one person or 10,000 persons may wish to have thus carried and to do so at the time or times that such person or persons may elect. I submit that no such obligation devolves upon a common carrier. When a railroad becomes a common carrier it does not undertake to do all the business in the country, but only that which it can reasonably handle up to the limit of its capacity. To illustrate: The Pecos line, which is now a part of the Santa Fe system, runs through the Panhandle of Texas. According to Mr. McKenzie (and I refer to him as one of the witnesses who has been before you—see page 64 of the published report of the hearing of February 14 before the Senate committee on this bill), from 250,000 to 300,000 cattle, equal to 12,000 to 15,000 carloads, are sometimes shipped yearly from this district, all of which it is desired to move between the 1st of August and the end of October. It is conceivable that the owners might wish to ship them all via the Pecos line, but it is inconceivable, as well as manifestly impossible, that this line can be compelled to perform all of this service in so short a period. It is merely obligated to do so up to the reasonable limit of its capacity. Our records show that on April 15, 1907, we had orders on that line for 566 stock cars to be loaded on that date; on April 20, 770 stock cars, and for the entire month of April 4,722 stock cars. For September 15, same year, we had orders for 546 stock cars; for October 10, 713 cars; for October 12, 653 cars; for October 25, 709 cars, and for November 1, 508 cars. In 1906 we had as high as orders for 1,500 cars to be loaded on a single day.

The CHAIRMAN. But many of those are duplications, are they not? A man asks for his car on the 1st of the month and does not get it, and then he asks for it on the 10th?

Mr. PEABODY. No, sir; those were specific orders for cars to be furnished, and were furnished so far as they could be furnished.

The CHAIRMAN. When you did not furnish them then, he asked again, did he not?

Mr. PEABODY. No, sir; they are not figured in that way. There is no such duplication in these figures. These are for actual cars that were needed for shipment—absolutely needed for shipment.

Mr. FAULKNER. On those particular days?

Mr. PEABODY. On those particular days, ordered for shipment on that day. We could not have handled them if they had loaded them.

The CHAIRMAN. Before you leave that point let me ask this question: You have limited the measure of duty of a carrier to its capacity?

Mr. PEABODY. To its reasonable capacity. I hold that when a body of men build a railroad into a country they do not offer to do all the business that can be brought to that line from everywhere.

The CHAIRMAN. Do they not?

Mr. PEABODY. No, sir; I do not think so.

The CHAIRMAN. I supposed they did.

Mr. PEABODY. I do not think so, any more than a man that has a team offers to haul all the business there is in town.

The CHAIRMAN. Oh, no; there is a vast difference between the two.

Mr. PEABODY. Of course I understand that one is a corporation and a common carrier and the other is a private individual. That is true. But so far as that point is concerned, as to what they offer to do, I think there is a parallel.

The CHAIRMAN. But their obligations are entirely different, it seems to me.

Mr. ESCH. Does not the test imply an obligation on the part of the carrier to take care of all the commerce that is legitimately tributary to its territory?

Mr. PEABODY. I think not, sir; otherwise——

Mr. ESCH. And have not the courts practically ruled in that direction?

Mr. PEABODY. I think not, sir, so far as I know. I am not a lawyer, but I think that my position in that particular has not been assailed anywhere that I can find. I have consulted the best attorneys that I have been able to get at, and they sustain my view of the proposition. Take it in the Pecos country, if you please, for instance. We went down into that Pecos country in advance of any other line. We were immediately flooded with shipments. We could not handle them. It was simply impossible to handle them. We simply went there and offered to do all the business we could do. That is all we offered to do, and all we were obligated to do. If there was any more business (as there was), other roads would build into that territory; and they did. The Rock Island road, from Fort Worth to Denver, built lines into that territory, because there was more business than we could handle; and that is the reason that duplicate lines are built. If there was an obligation on any road to handle all the business in the country, there would not be but one railroad. That is just the reason we have more railroads—because one railroad can not do all the business in the country. But I do not think any road is obligated to do that.

The CHAIRMAN. No; it might be because the second road wanted to institute competition and wanted to share in the business.

Mr. KENNEDY. You could expand your facilities so as to take care of that many shipments, could you not?

Mr. PEABODY. We have not the money.

Mr. KENNEDY. I do not think it is the duty of a railroad to maintain an equipment the year round as large as the shipments might be in any one day.

Mr. PEABODY. No.

Mr. KENNEDY. But I believe a railroad should furnish reasonable facilities.

Mr. ESCH. Nor I; but sufficient equipment to handle what is reasonably to be anticipated would not be demanding anything out of the ordinary, would it?

Mr. PEABODY. You can not accommodate more than so much on a single track.

Mr. ESCH. You know what time in the year and practically what weeks in the month the shipments are to be made, because you have operated the Pecos lines for some years; so the time of the shipping period is pretty definitely determined.

Mr. PEABODY. Yes, sir.

Mr. ESCH. Can you not anticipate that long enough in advance to get the cars there to take care of the shipments?

Mr. PEABODY. Sometimes we can, and at other times we can not. As I go on you will see that I give you instances where it is simply impossible.

Mr. ESCH. Very well; I may be anticipating your argument.

Mr. PEABODY. But I want to make that point clear—that I submit the proposition that it is not the duty of the railroads to furnish all of the facilities necessary to handle all the business in any country. They are simply obligated to do so up to the reasonable limit of the facilities they have. They have not money to buy any more. Lots of railroads could not buy it if they wanted to. The only way they can buy it is to earn money by the use of the equipment they do have, and not give it to the stockholders, as perhaps they ought to do, but apply it to the purchase of more equipment, and so keep on. There are a great many railroads in the United States that have absolutely earned enough to pay dividends, but that have not paid dividends for twenty years, simply because of buying equipment. Their stockholders have grumbled somewhat, but that did not do any good.

To hold this line should be compelled to meet the demands of such an eccentric traffic is plainly indefensible. A railroad may not make a selection as to whom it will serve, by receiving so long as it can handle them the shipments of one man and refusing those of another, but to hold that a railroad is obliged to take care of all the traffic which may be tendered to it under any and all circumstances is manifestly an error. It is a matter of common knowledge that so far as possible shipments are held back during times of low prices and rushed to market when prices are high. This is not only true of cattle, but of grain and various other commodities. It is evident that no road, particularly in the West, can make provision for a sufficient number of cars to promptly load all traffic thus ordered, and if it could supply the cars and in addition thereto the engines, no single-track road at least could handle the extra trains incident to such a movement. To penalize, therefore, a carrier for failure to accomplish the impossible would be clearly an injustice.

The CHAIRMAN. Let me ask you there, how many trains have you in the busy season on the Pecos Branch—this branch you have spoken of?

Mr. PEABODY. I do not know.

The CHAIRMAN. How many trains are there?

Mr. PEABODY. I have not it in my mind; but during the busy time we run all the trains we possibly can run.

The CHAIRMAN. Can you not give us some idea of about the number?

Mr. PEABODY. I am not an operating man. It is possible that I have the figures of the Pecos Division here.

The CHAIRMAN. I do not want to interrupt you. You can answer at any time. I do not want to interrupt your argument to get you to hunt up something.

Mr. PEABODY (after examining papers). No; I have not the figures for the Pecos Division.

Mr. KENNEDY. Exactness is not necessary, I suppose; an approximation would do.

Mr. PEABODY. There is a gentleman here who has been on our line, who is directly interested in the train and car equipment, and he could answer that question with accuracy.

Mr. Cowan has submitted to this committee as well as to the Senate committee a large mass of statistics which he claims indisputably show that much of the so-called delay attaching to the cattle movement is owing to the practice adopted by the roads of carrying more business with less train miles and increasing the weight of trains beyond the power of the locomotive to move them with facility. He says (page 37 of the record of the hearing before this committee on February 15) :

I wish to file statistics showing absolutely that there is less train mileage to-day per mile of line than there was in 1900.

Mr. Cowan, however, omits the very important item of passenger-train mileage; his figures show only freight-train mileage. On the Santa Fe the passenger-train mileage per mile of road increased 39.7 per cent in 1906 over 1900. This class of traffic must keep pace with the requirements of the people, and the number of trains can not be reduced by hauling more cars with bigger engines. At the same time the train limit of a single-track road must be observed; hence the only remedy is to keep within that limit by increasing the size of the freight trains, thereby reducing their number to a minimum. To do this, railroads in the last few years have spent enormous sums of money buying heavier engines and larger cars. In order that the committee may know to what extent this has been done, I have analyzed the Santa Fe figures and present them herewith in graphic form. Mr. Cowan says in his statement that the service of the railroads in 1900 was reasonably satisfactory, and starting from that point his tables purport to show that since that time the railroads have failed in their duty. I have, therefore, taken the business of 1900 as standing for 100 per cent, represented by the perpendicular line crossing the parallel lines, which show the corresponding figures for 1906.

In other words, the business in 1906 is represented by the total length of these lines. The amount of business done in 1900 is taken as 100 per cent, and a line is drawn right across, which represents the business in 1900. The proportion on this side shows the increase in 1906 over 1900.

Mr. ESCH. And the decrease?

Mr. PEABODY. There is only one decrease.

Mr. ESCH. Yes.

Mr. PEABODY. This business was satisfactory, according to Mr. Cowan, perfectly so; and I submit that if that is satisfactory, the

business in 1906 ought to have been more so. I will refer to each one of these items as I proceed.

It will be seen by this diagram that we increased our main track mileage from 6,433 miles to 8,827 miles, or 35.7 per cent. This, however, is no measure of our ability to handle traffic. It merely indicates that we extended our lines into fields not occupied in 1900, and unless supplemented by adequate terminal and operating facilities would add to rather than relieve our difficulties. The second line in the diagram shows, however, that we made ample provision in the way of double tracks, yards, and sidings, which from 1,360 miles in 1900 grew to 2,657 miles in 1906, an increase of 95.4 per cent. We almost doubled our terminal and side track and passing facilities. Even under such advantageous conditions we were unable to handle business as promptly as desired (and I want to make this point plain), largely through the failure of consignees to provide for the disposition of property on arrival at destination. As an illustration of this fact I am advised that during the winter of 1907 more than 100,000 loaded freight cars were held in Chicago at one time awaiting delivery, and it was chiefly owing to this congestion at the large terminals that the railroads were unable to supply the heavy demand which then existed for empty cars all over the country.

Every other large terminal in the country was similarly situated. The people did not dispose of the stuff that was there, and the railroads could not get the cars off.

Appreciating the fact that more power and heavier power was required to move the traffic, the Santa Fe Railroad increased its supply of locomotives from 1,136 in 1900 to 1,651 in 1906, equivalent to 45.3 per cent, at the same time the average weight on drivers—which represents the pulling power—was raised from 44.54 tons in 1900 to 59.06 in 1906, or 32.6 per cent. It is apparent to anyone that an addition of 45 per cent in the number of locomotives supplemented by an increase of 32 per cent in the pulling power of each locomotive—that is to say, an addition of 92 per cent of locomotive efficiency—absolves this road from any charge of negligence in this regard. The same condition obtains in respect of freight cars, 28,042 being the number owned in 1900 and 44,204 in 1906, an increase of 57.6 per cent. This addition in numbers is also supplemented by the fact that the new cars are of larger capacity, but this advantage can not be altogether utilized by the railroads. Although Mr. Cowan uses this larger capacity in support of his statement that railroads have sufficient equipment to do the business, he knows very well that shippers will not load to the maximum; in fact, a large majority seldom exceed the minimum, and thousands of cars are handled every day by the railroads which are not loaded to one-half of their capacity. Even at this the shippers state that the minimums are too high, and complaints are now pending before the Interstate Commerce Commission to reduce them.

So much for the provisions made for handling the business. Now, let us see as to the business handled. Mr. Cowan's figures show that the tons of freight hauled by the Santa Fe increased during the years under consideration 77.8 per cent; that the total mileage of freight cars increased 68.5 per cent; that the loaded cars hauled 1 mile increased 78 per cent, and that the empty cars hauled 1 mile increased 79 per cent. If these figures prove anything, they show

that the service provided in 1906 increased slightly more than tons handled, so that if the service of 1900 was satisfactory the performance of 1906 must be equally so. As a matter of fact, however, these figures prove nothing. The correct basis is the service per mile of road. Thus our total passenger-train mileage increased from 9,699,531 in 1900 to 15,559,602 in 1906, or 60.4 per cent, while per mile of road it grew from 1,266 in 1900 to 1,769 in 1906, or 39.7 per cent. Again, our freight-train mileage in 1900 was 12,263,200 and in 1906 17,828,726, an increase of 45.2 per cent, whereas per mile of road it grew only from 1,906 in 1900 to 2,020 in 1906, an increase of only 6 per cent.

In other words, we were obliged to increase our passenger-train mileage. We could not help ourselves. The passengers were there and we were obliged to carry them. We could only carry them in trains of certain sizes, and we had to put on more train mileage. The only way to get our freight over the road was to increase the size of our trains. We could do that; and we spent a large amount of money doing it, with the result that we only were obliged to increase our freight-train mileage 6 per cent. If we had increased our freight-train mileage equal to our passenger-train mileage, we could not have done anything; we would simply have blocked the road.

It is well understood that the multiplication of trains on a single-track road has the inevitable effect of slowing the movement of traffic. Necessarily under such conditions passenger trains must be given the preference; hence the great disparity in the increase between passenger and freight trains as shown in the diagram—a disparity which was sought to be overcome in some measure by increasing the weight of trains and thus reducing their number. Had the attempt been made to run same relative number of freight and passenger trains in 1906 as in 1900 the amount of service possible of performance would have been largely decreased.

The question was asked Mr. Richards as to whether or not freight trains were ever held for the purpose of getting a prescribed tonnage in the cars. I have been in the railroad business now for more than forty years, and I never knew such to be the case for more than an hour or two. We have held trains one or two or, perhaps, three hours at times in order to fill them up. We did it under the old system, and we do it under the present system, the difference being between what is known as the car system and the tonnage system. The tonnage system does not mean that we load our engines up to the largest possible amount that they can pull. It merely means that instead of basing our engine haul upon cars, some of which weigh half as much as others, the old rule provided that certain engines over a certain district should haul so many cars; and we now base it upon the weight of the cars, and only carry so much tonnage. We do not load them any heavier than we used to—not a particle. That is the only difference between the tonnage system and the car system. We get a more equable and even load than we used to under the old basis; necessarily so.

Coming now to the density of traffic, we find that the ton-miles per mile of road increased from 448,518 in 1900 to 665,828 in 1906, or 48.4 per cent. This was taken care of by a growth in loaded freight-car mileage from 35,040 to 45,659, the corresponding empty-car movement increasing from 13,716 to 17,888. The average number of loaded cars per train grew from 18.4 to 21.9 and the average tons

per loaded car from 12.8 to 14.6, thus increasing the average number of tons per freight train from 236.3 in 1900 to 329.7 in 1906, an increase of 40 per cent. At the same time the average length of haul grew from 274 miles to 325.1 miles, equal to 18.6 per cent.

These figures show conclusively that the Santa Fe road made abundant provision to take care of the traffic tributary to its line. It is not asserted that any higher motive than enlightened self-interest moved it to thus provide facilities for handling the larger traffic, and it desires to go on record at this time as affirming that had the shippers of the country fulfilled their obligations in connection with the loading and unloading of cars anywhere near to the extent achieved by the Santa Fe in handling them, not only would the difficulties of the shippers have largely disappeared, but the railroads would have made considerably more money.

It is interesting to note in this connection that the live-stock interest which appears here as the chief prosecutor (and which might not be inaptly termed the chief persecutor) received the greatest amount of consideration. It will be observed on the diagram that the Santa Fe road enlarged its equipment of cars for this traffic from 2,566 in 1900 to 4,181 in 1906, an increase of 62.9 per cent, whereas it actually handled 5 per cent less live-stock tonnage in the last-named year than in the first named. The significance of this is apparent when it is considered that the Santa Fe is one of the largest live-stock carriers in the country. During the year ending June 30, 1906, this company hauled 85,352 cars of live stock. Kansas City is perhaps the best representative live-stock market in the country. The principal roads supplying that market (named in order of amount of the traffic hauled) are the Santa Fe, Missouri Pacific, Rock Island, Union Pacific, Frisco, Missouri, Kansas and Texas, Kansas City Southern, and St. Joe and Grand Island. The receipts by these roads during the calendar year 1900 were 108,146 carloads and for 1906, 118,514, an increase of 9.6 per cent, while during the same time the combined live-stock car equipment of these same roads increased from 10,216 to 13,492, equivalent to 32 per cent. The trouble with the live-stock interest is that it is in much the same condition as the spoiled child. In the early days it was coddled and petted until it came to believe that it was entitled to anything it asked for, and it was and is by no means modest in its demands, whereas the facts are that although it is about the least remunerative business handled by railroads, it is given the best attention and service of any class of traffic.

Mr. ESCH. What percentage of your total tonnage is live stock?

Mr. PEABODY. I have it right here.

Mr. ESCH. If you are coming to it anyhow, never mind.

Mr. PEABODY. I have it right here. I have exactly how much we have of every commodity we handle here. [After consulting papers.] In the case of cattle and calves, which are principally meant by "live stock," the percentages of the total tonnage is 4.6.

The CHAIRMAN. What percentage is it of your east-bound freight?

Mr. PEABODY. It is practically all east bound. Oh, east-bound freight? I have not those figures; but the same as in the case of the Northern Pacific, our east and west bound freight is fairly evenly divided. It will come inside of 10 per cent difference; and all of the live stock is east bound. So it will be, on that basis, somewhere about between 8 and 9 per cent of our east-bound traffic.

That is all I have on the subject of this diagram. Unless some of the gentlemen wish to ask questions in relation to the supply facilities, I will now take up some of the other features of the bill. But the reason I put that in diagram form is because it is almost impossible for anyone to take a large table of figures, such a mass as was thrown at the committees by Mr. Cowan, and get any information out of it, particularly as he seemed to be very careful to divide them in such a way that they were difficult to throw together. I analyzed these statistics for that purpose, and I have provided a reduced form of that diagram in blueprint form here, of which I can furnish each member of the committee a copy if they wish.

(Mr. Peabody was directed to furnish a copy of the diagram to the stenographer for insertion in the record, and the same is hereto appended.)

Mr. ESCH. In your total number of freight cars do you include stock cars?

Mr. PEABODY. Yes, sir.

Mr. ESCH. Then I notice that you have the total number of freight cars owned as 28,042, and the total number of stock cars owned 2,566—about 10 per cent.

Mr. PEABODY. Yes, sir.

Mr. ESCH. While you carry but 4 per cent of the live stock?

Mr. PEABODY. Yes, sir. As I say, we favor the live-stock interests much more than they deserve.

Mr. ESCH. Of course the stock cars would also include cars for the hauling of horses, and so on?

Mr. PEABODY. Oh, yes; certainly. That includes the whole of the live stock. Those figures include all live stock.

Mr. ESCH. Yes, but you only gave me, as live stock, 4 and a fraction per cent.

Mr. PEABODY. I can give you the others right here. [After consulting papers.] The percentage of the tonnage of horses and mules is twenty-four one-hundredths of 1 per cent; cattle and calves, 4.6 per cent; sheep and goats, thirty-four one-hundredths of 1 per cent; hogs, eighty one-hundredths of 1 per cent.

Mr. ESCH. So it makes about 6 per cent?

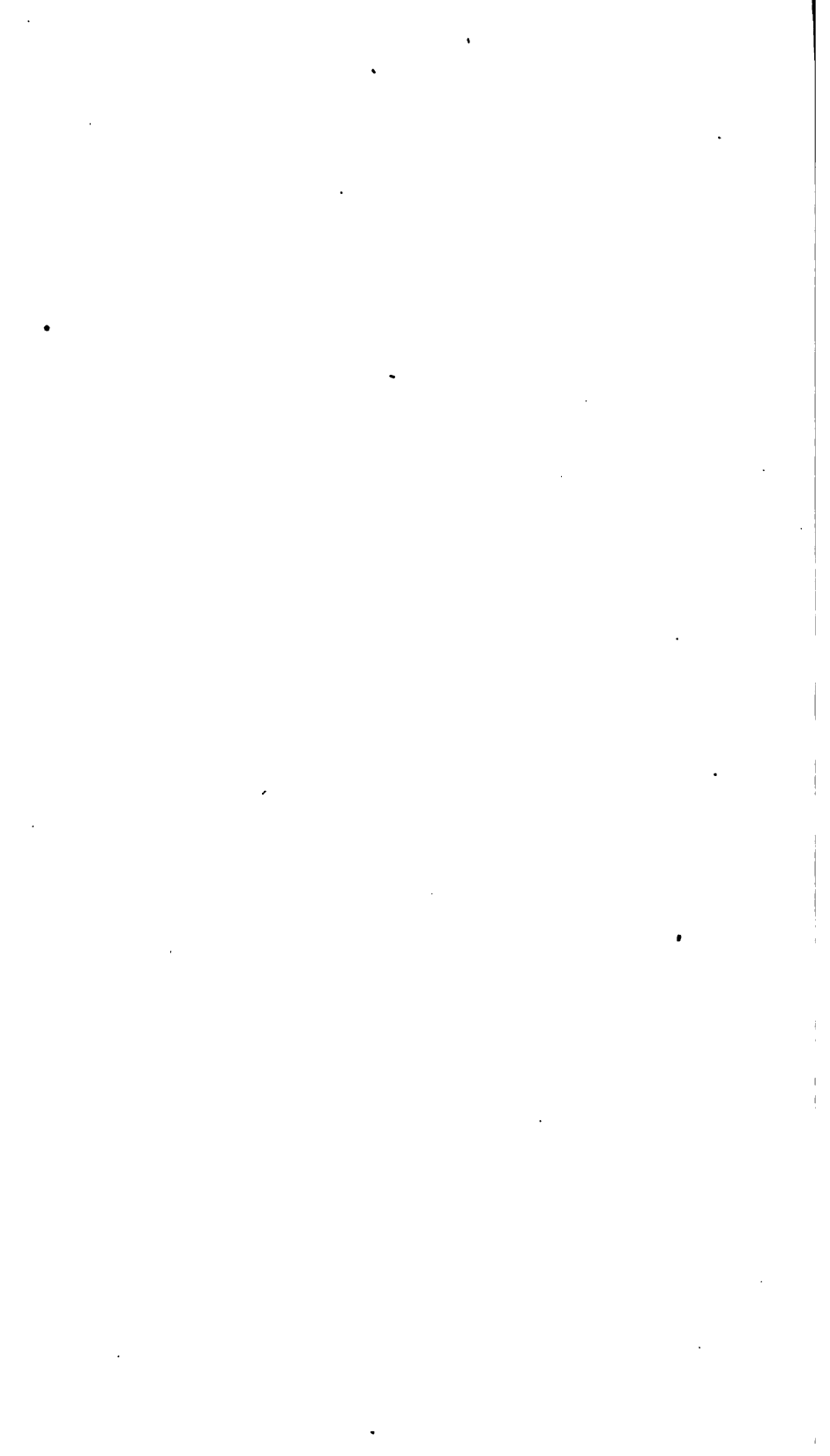
Mr. PEABODY. Less than 6 per cent; yes.

Mr. KENNEDY. These live-stock cars are not used exclusively for live stock?

Mr. PEABODY. Oh, no; although they are kept for live-stock use, and in a very large number of cases they are. When live-stock shipment is offered, we rush the cars to destination without ever trying to get loads for them. We could not supply loads for the particular points where they were needed, as you can readily perceive; and when an order is given for those cars, we never attempt to load them, although we utilize them as far as we can for loading such business as can move in the direction where they are going. When there is no live stock for shipment, we utilize them for other things as far as we can; although the loaded mileage of stock cars is very much less than the loaded mileage of other cars. Mr. Levy, have you in mind about what the difference is between the loaded movement of live-stock cars and box cars?

Mr. LEVY. Yes; I should say, offhand, that the loaded movement of stock cars would not exceed from 60 to 65 per cent, while that of

Item.	Operation in 1900 repr
Operated main track mileage	
Mileage of double-track yards and sidings	
Number of locomotives	
Average weight on drivers in tons	
Total number freight cars owned	
Number tons freight hauled	
Total mileage of freight cars	
Loaded cars hauled one mile	
Empty cars hauled one mile	
Passenger train mileage	
Passenger train mileage per mile of road	
Freight train mileage	
Freight-train miles per mile of road	
Freight train density, ton miles per mile of road	
Loaded freight-car mileage per mile of road	
Empty freight-car mileage per mile of road	
Average number loaded cars per train	
Average number tons per loaded car	
Average number tons per freight train	
Average length of haul	
Number of live stock cars owned	
Tons of live stock hauled	



box cars, in times when they are in demand, would have to be 80 to 90 per cent in order to strike a general average; or about 75 per cent for all classes of cars.

Mr. PEABODY. That is what I thought.

The so-called reciprocal feature of the proposed law is tantamount to a joke. It is proposed to fine the railroads unless cars are furnished, but in the event that the shippers fail to load all or any portion of the cars thus ordered, there is no penalty for the shipper. This last proposition is of very frequent occurrence. Shippers almost invariably order more cars than they need or can load. In the testimony submitted to this committee at the hearing of February 15 (p. 50) in a letter written by the president of the Continental Land and Cattle Company to Mr. Cowan for use in this case he quotes his foreman as follows:

I ordered 20 cars over the Santa Fe at least two weeks ago to load the 5th of October. I also ordered some more to-day; I also ordered 25 cars over the Missouri, Kansas and Texas on October 5, 1907, but there are no cars yet.

(At this point Mr. Peabody submitted the following table, to which reference was made later in his remarks:)

Fort Worth and Denver City Railway Company—Statement of orders placed for stock cars by Murdo Mackenzie for account of Matador Land and Cattle Company, from May 1 to October 31, 1907.

Order No.	Date of order.	For loading.		Destined to—	Via—	Number cars ordered.	Loaded.	
		At—	Date.				Date.	Number cars.
1873	May 4	Estelline.....	June 1	Evarts, S. Dak..	Rock Island..	25	Canceled	.....
1876	.....do.....	.....do.....	June 7	Swift Current ..	.....do.....	25	June 8	23
1877	.....do.....	Clarendon.....	.....do.....	.....do.....	.....do.....	35	.....do.....	30
1929	June 8	Estelline.....	June 20	Evarts, S. Dak..	.....do.....	25	June 20	24
1934	June 15	Murdo.....	July 22	.....do.....	.....do.....	23	July 22	21
1939	June 20	Estelline.....	June 30	.....do.....	.....do.....	36	July 3	34
1940	.....do.....	.....do.....	July 2	.....do.....	.....do.....	22	July 2	20
2190	Sept. 18	.....do.....	{Oct. 5	{Kansas City....	.....do.....	{	Nov. 11	21
			{Oct. 6			{	Nov. 12	18
2235	Oct. 2	Murdo.....	Oct. 15	.....do.....	.....do.....	16	Nov. 7	11
2256	Oct. 7	Estelline.....	{Nov. 2	{.....do.....	Any route....	{	Nov. 21	29
			{Nov. 3			{		
		Total.....	.....	.....	.....	285	.....	231

Mr. PEABODY. Mr. McKenzie, who appeared before you, and who is one of the chief witnesses in the case (the chief complainant), is a large shipper upon the Denver City and Fort Worth Railroad. I wrote to the general manager of that road and obtained a record of his orders for cars and his shipments for an entire season, all of them, good, bad, and indifferent.

He ordered on May 4, for loading June 1, 25 cars to go to Evarts. He canceled the order one day before the cars were to have been loaded. The cars were there, but were not used.

On May 4 he also ordered 25 cars, to be loaded on June 7 to go to Swift Current. (That is up in Canada.) Those cars were loaded on June 8, the next day after the order called for them.

On May 4 he also ordered 35 cars, to be loaded on June 7, and 30 of those cars were loaded on June 8. (I should have said, in regard to the order for 25, that only 23 were loaded, although all the cars were furnished.)

On June 8 he ordered, for June 20, 25 cars to go to Evarts, S. Dak. He loaded 24 of them on the same day.

On June 15 he ordered, for July 22, 23 cars. He loaded 21 of those cars on the 22d, the same day.

On June 20 he ordered, for June 30, 36 cars. He loaded on July 3, 34 cars.

On June 20 he ordered, for July 2, 22 cars to go to Everts. He loaded on that day 20 cars.

Now he comes up to the congested period. You will notice that the loading was all prompt, although he never loaded his full quota of cars.

Mr. STEVENS. Did you furnish the full quota of cars?

Mr. PEABODY. The full quota was furnished in each case.

On September 18 he ordered 34 cars to be loaded on October 5 and 6. Those cars did not get there in time to be loaded until nearly a month later. They struck this congested period. On November 11 and 12 he loaded 39 cars. Some more cars had come in, and he loaded more cars than were ordered.

On October 2 he ordered, for October 15, 16 cars, and on November 7 he loaded 11. That was because there was a delay on the part of the railroad.

On October 7 he ordered 34 cars, and he loaded 29 of those on November 21.

During that period he ordered 285 cars, and he loaded 231 of them. There was no penalty, although the railroad had to haul those cars down there and then haul them somewhere else. There is no penalty attaching in the reciprocal feature.

Mr. KENNEDY. That overordering results partially from the practice of prorating, does it not?

Mr. PEABODY. Not on the stock cars; it does on the grain cars.

Mr. KENNEDY. It does in the coal business out our way.

Mr. PEABODY. It does in the coal business.

Mr. KENNEDY. When the shippers are getting about 50 per cent of their requirements for shipment, they seem to think it is just a matter of mathematics—that if they order twice as many, then they will get all they want.

Mr. PEABODY. That is true; but under the bill we would be obliged to fill those orders under penalty; and if they did not load them, there would be no penalty on their side.

Mr. ESCH. Did not the thirty-six-hour law for stock shipments prevent overloading?

Mr. PEABODY. Overloading the cars?

Mr. ESCH. Yes.

Mr. PEABODY. What do you mean by "overloading?"

Mr. ESCH. Too many in a car.

Mr. PEABODY. Oh, they never do that; we do not permit that.

Mr. ESCH. I was getting at this point: This shipper always ordered two or three cars more than were required.

Mr. PEABODY. Yes.

Mr. ESCH. Was that due to the idea that he wanted to get fewer in a car in order to have greater security for them?

Mr. PEABODY. Oh, no; that was due to the fact that he did not know how many he was going to ship when he ordered. He knew about how many he was going to ship, and he ordered enough cars;

and when he cut out his cattle he found that he did not have enough of just the grade he wanted to go at that time, and consequently he did not have enough to fill his cars; that is all. He did not overload his cars in consequence of it at all. That would not have done him any good. In fact, they underload rather than overload, because the rate is so much per hundred pounds.

Mr. ESCH. I can see that the tendency would be all the other way.

Mr. PEABODY. The tendency is all the other way.

Instances have been known where a shipper has ordered a supply of cars from three different roads for the same shipment and used none of them. (This is the point the gentleman just referred to.) In times when cars are scarce, and understanding that a railroad in its attempt to be fair distributes them pro rata, many shippers make a practice of ordering more cars than they can use, with the idea that they will thereby receive a greater number than if they ordered only what they wanted. I venture to say that if, as is the case with the Texas statute, the shipper when ordering cars was required to deposit 25 per cent of the freight charges as a guarantee that the car would be used, the railroads would offer no objection to the so-called reciprocal feature of this bill.

You will remember that that statute was enacted in Texas. The shipper, when he ordered cars, was obliged to state what they were going to be loaded with, and the point to which they were going, and deposit 25 per cent of the freight rate to that point, and if the railroad company did not furnish the car on that day they were penalized in a large sum. I think it was \$25 a day, was it not?

Mr. LEVY. Twenty-five dollars a day at both ends.

Mr. PEABODY. We have not any objection to such a law as that, because it will make the shippers order what they want and only what they want, and we can hold ourselves ready to furnish all the cars that are necessary. We had an amusing instance in Texas of the way that law worked out—and, by the way, it is a dead letter in Texas. I think it has been repealed, has it not? If it has not—

Mr. LEVY. It has been declared unconstitutional on account of the penalty being excessive.

Mr. PEABODY. It was a dead letter, at all events. A gentleman ordered a number of cars of oil to be shipped from Beaumont or some of the oil-producing points; and we knew that he had no oil to ship. He was not an oil man; and he knew that ordinarily we could not, by any possibility, get the cars there. He knew the location of our tank cars. So he ordered so many cars and deposited the required amount of money. We got the cars there, knowing that he did not have the order; and then he had to go out and buy the oil to load them. Inasmuch as he had given the point of destination as Dallas, Tex., he had to ship them to Dallas, Tex.; and he had bought enough oil to fill his order to supply Dallas for two years. When he got up there he could not get rid of his oil, and he begged us to take the oil for the freight. [Laughter.] He tried a speculation, but it did not work; that was all.

I want to say here, gentlemen, that if this law is enacted there will be lots of that sort of thing; because you will notice that there is no penalty on the shipper. He is not obliged to take the cars that are furnished; and we will have cars ordered by the hundred for a given point in the hope that we can not furnish them, and then we will be subjected to penalties; and they will make a semblance of legitimacy

by getting an option on a lot of cattle or a lot of grain or a lot of stock or something else that they do not want and do not own. They will merely get an option, hoping that the cars will not come, and if the cars come they will exercise their option. They will run the risk, and enter into it as a sort of a speculation. That is what will be done in case such a law as this is passed.

The amount of knowledge concerning railroad operations professed by the advocates of this bill is astonishing, to say the least, seeing that they are not railroad men. It reminds one of the old saw of Josh Billings, "it is better not to know so much than to know so much that ain't so." At the hearing before this committee already referred to (p. 32) the following colloquy took place:

Mr. MANN. If a car goes through to New York on the New York Central it does not mean that it will get back by the New York Central. A car that goes to Chicago over the Burlington road, say, and goes to the stock yards, gets out of the hands of that road and they are unable to get it.

Mr. COWAN. You are much mistaken about that. Certainly if the railroad starts after it they have it in their possession and get it and could comply with the provisions of this bill by that means if that were necessary; but that is not the question, gentlemen of the committee. Here are simply supposable things that in actual practice never happen.

Mr. Mann was perfectly correct in his question.

On one occasion the Santa Fe road hauled about 700 stock cars from Chicago and Kansas City to Texas, there delivered them to a connecting line for loading, and next received them at Kansas City (empty), they having been hauled loaded to that point by another line), from which point we were obliged to return them to Texas empty the second time.

We hauled those stock cars twice over the road without getting a pound of freight out of them; and as they happened to be private cars, we paid mileage on both trips. This time, however, we held them on our own rails and so secured the return haul. As Mr. Mann suggests, this is constantly happening.

Another case in point is where we purchased a lot of new cars in Pennsylvania, which we permitted to be loaded for Chicago, to be delivered to our line at that point.

This was early last year. These cars were loaded with coke. The reason we permitted them to be loaded was because we saved mileage, and we saved the expense of hauling them. We would have had to pay for the haul to Chicago; whereas if we permitted them to be loaded we simply got the mileage on the cars.

These cars were loaded with coke, brought to Chicago, and unloaded on the rails of the carrying line; were immediately reloaded with grain at an elevator on the same line and carried by that road back East, being distributed all through the Southeast. The most strenuous efforts were made to have these cars promptly returned, but some of them did not reach our line until more than a year after they were paid for, and two of them have not come back yet.

In the tabulated statement filed by Mr. Cowan with this committee he refers to the miles per car per day on various roads for the years 1900 and 1906; and I will ask your careful attention to the following, because it explains the point that you brought up with Mr. Richards, and I think will explain a very much misunderstood point:

For some unknown reason, probably because the figures would not support his contention, he omits the Santa Fe; but I will supply

the figures, which for the year 1900 should be 29.87 miles, and for 1906, 33.22 miles, showing a decided improvement for this latter year. That, however, is only a part of the story. The impression sought to be created by Mr. Cowan is that when the cars are moving they travel at a very slow rate. The figures he quotes are found by multiplying the total number of cars on the railroad, whether loaded, empty, idle on side tracks, in shops awaiting repairs, and under all other conditions, by the number of days of the year, which sum is used as a divisor of the total car miles run during the year to give the average per day.

You can readily see how that reduces the movement per day of the car. We have hundreds of cars that are out of service, sometimes lying thirty or forty or fifty days in the terminal, waiting for somebody to unload them—particularly the coal men that use the cars for storage instead of having yards where they can unload them, and all that sort of thing. All of that counts a car per day, but it is not making a mile of run; it is simply standing there. But when you divide that into the total miles run, you get the average per day for the year; and that is slow, necessarily, but still not so slow as you would think.

Before going on I call your attention back to those figures. Our movement in the year 1900 was 29.87 miles per car day, even under those conditions; and in 1906 it was 33.22 miles, even under those conditions, instead of being from 10 to 20, as the chairman said was stated before the committee.

In order to show the actual movement we have selected six days of our heaviest movement, during the congested months of September, October, and November, 1907, which would naturally show the slowest movement, and taken the number of cars loaded and moving on the line as compared with the total number of cars on the line, with the following result:

That is to say, every car that was being used in any way, whether it was being in process of loading or moving on the line or switching at a terminal, or being unloaded at a terminal—every car that was in use (I do not now refer to the cars that were standing on the track, but every car that was in use) we took the figures of, in order to ascertain what proportion of the total cars were moving and being used. We took the six heaviest days, which of course would represent the largest congestion and the slowest movement.

On September 21 we were loading and moving 15,352 cars, as against a total of 64,257 on the line, equal to 23.8 per cent; on September 26 we were using 15,034 cars, as against 59,422 on the line, or 25.3 per cent; on October 23 we were employing 17,335 cars, as against 67,475 on the line, or 25.7 per cent; on October 25 we handled 17,661 cars, as compared with 67,475 on the line, or 26.2 per cent.

Mr. ESCH. That would include foreign cars?

Mr. PEABODY. Every car on the line, whether it is our own or any other car.

On November 5 we used 15,935 cars out of a total of 68,121 cars, or 23.4 per cent, and on November 30 our record shows 17,155 cars out of a total of 69,942, or 24.5 per cent. You will observe that the mileage made is done with about 25 per cent of the equipment, the other 75 per cent being out of service for various reasons, not the least of which is the detention by shippers. Our average mileage for

the year 1907 was 31.2 miles per day, but inasmuch as only 25 per cent of the cars included in this computation were in actual use, it would make the average miles when in use upwards of 120 miles per day.

Mr. ESCH. That would show that you had about 30 per cent of foreign cars in use?

Mr. PEABODY. This is all of our cars. Oh, yes—according to the amount we had.

Mr. ESCH. Yes.

Mr. PEABODY. Yes; we had a very large number of foreign cars. I did not include in my presentation here any reference to the proportion of foreign cars. I have it in the presentation I am going to make to the Senate committee, and I can refer to it here, if you would like to know what proportion of foreign cars we have.

Mr. ESCH. No; that is all right.

Mr. PEABODY. That was not brought up in any representation by any of the witnesses of which I had any record before your committee, and so I did not refer to it.

I say that would make the average miles of the cars in actual use 120 miles per day. Remember, this includes the cars that were being loaded at the stations as well as those that were moving; so that when our trains were moving they ran probably 150 to 200 miles a day, very many of them, anyway, at least 150 miles a day; and that, by the way, is not an unusual movement. As was said by Mr. Richards, 10 miles an hour for twenty-four hour would be 240 miles, you see.

Mr. ESCH. You can make much better speed than a great many other lines on account of the fact that your stations are farther apart?

Mr. PEABODY. Oh, I think not. Out in Arizona some of the stations there are a considerable distance apart, but that is a comparatively small part of our traffic. Our stations are pretty thick where we handle most of our business. In Kansas we have stations a good deal thicker than we would wish.

The conditions obtaining upon the Santa Fe will relatively apply to all roads, furnishing abundant evidence of the error of the statements advanced by Mr. Cowan.

I am merely calling attention in this case to "things that ain't so," as I stated.

Referring to the adoption of a similar bill by the Texas legislature, Mr. Cowan says (p. 36):

The railroads of Texas agreed with me on this bill. We had it up before a conference committee of the house and senate. It was passed at the last session of the legislature and it is now on the statute books of Texas, the railroads believing it was an advantage to them to do it. Hon. J. W. Terry, attorney for the Santa Fe lines, and Hon. N. A. Stedman, of the Gould lines, representing all the railroads at Austin during the session of the legislature, agreed to this and substituted it for all bills pending.

A sufficient answer to this is the following telegraphic correspondence between Judge Terry and myself on this subject:

J. W. TERRY, *Galveston*:

FEBRUARY 29.

Is it a fact as stated by Mr. Cowan in his advocacy of the Culberson bill before the Congressional committee that you and Stedman made an agreement for the passage of similar bill in Texas on the ground that it was of as much advantage to the railroads as to the public.

JAS. PEABODY.

JAS. PEABODY, *Chicago*.

Judge Cowan is mistaken in the statement that I agreed with him that a car-pooling bill should pass. I am confident I never had a conversation with him about the bill pending in Congress. During session of last Texas legislature, when it became apparent that some kind of a bill would pass, Judge Stedman and I did confer with Judge Cowan in an effort to remove some of the objections to a substitute bill which he had prepared. Some of our suggestions were accepted by Mr. Cowan and others were not. In a discussion before conference committee that committee accepted some of our amendments to Mr. Cowan's bill and declined to accept others. Judge Stedman and I expressly stated to the conference committee that we did not wish anything then done by us to be considered as a waiver, morally or otherwise, of the right of thereafter attacking in the courts the feature of the bill requiring railroad companies to send their cars off their lines.

J. W. TERRY.

In regard to the complaints made as to the time in moving stock over the Santa Fe, the following testimony appears (p. 17):

MR. COWAN. Do you know what is the cause of this slow time that is made? Are you on the train sometimes and see the men?

I have inserted here the word "not," evidently omitted by the stenographer. The record reads, "I do know what the cause of it is," but evidently that is the stenographer's error.

(Reading:)

MR. SOWDER. I do [not] know what the cause of it is, but they complain that the engines are too heavily loaded; in other places that the track is in bad condition, and they are not allowed to run fast.

MR. COWAN. Did you see the orders in any case?

MR. SOWDER. I do not know that I ever read them. I just heard conductors state to brakemen not to exceed 8 or 10 miles an hour over certain parts of the country. Some places they were so you could not make more than 15 miles an hour; quite frequently I have heard it so stated.

It is a fact well known to both Mr. Cowan and Mr. Sowder that the Santa Fe road has been engaged in the reconstruction of the Pecos Valley line and the building of a cut-off to Albuquerque, with the double object of improving the service in this cattle country and obtaining a better transcontinental line. Every foot on the old line had to be practically rebuilt, and it was manifestly impossible to make fast time over a track under such conditions. We claim that our performance under the circumstances was excellent, and substantiate that claim by Mr. Sowder's own testimony (p. 18), to wit:

MR. COWAN. What would you say would be the average speed between here (Amarillo) and Kansas City?

MR. SOWDER. The only one I have figured out is where I have had cattle myself. In some instances I have wanted to see what time they did make. I think it did at about 12 or 14 miles an hour—that is, taking the time they leave here to the time they arrive at Kansas City.

When it is considered that during this haul the cattle must be stopped and fed at least once, it will be admitted that such an average means an actual running of about 20 miles per hour, and under the circumstances is very good.

You will remember that Mr. Cowan presented this committee with quite a lot of letters from different parties over the country. It is a matter of common history out there that he has been engaged for a year in getting up testimony for this very thing, and he has besought every possible source of complaint for ammunition. The list that he presented was not very formidable, and one of them he omitted, for reasons which I will give you here.

Another omission by Mr. Cowan in this connection is significant. There is a local association of cattle raisers in that section which has a larger membership, although owning a somewhat lesser number of cattle than the one represented by Mr. Cowan. (His is the Texas Cattle Raisers' Association.) Not a single member of this association could be induced to join in supporting this bill, although strongly solicited. (And these are parties that live along the road.) They stated that in view of what we were doing to develop the country and to provide improved service they had no complaints to make.

As to the matter of using stock cars for other traffic, in which it is sought to convey the impression, although it is nowhere distinctly stated, that as between live stock and other freight the former is discriminated against, the following testimony is significant (p. 17):

MR. COWAN. Do you see stock cars being used all over the country for other freight than cattle?

MR. SOWDER. I see them loaded with coal, brick, stone, and some with railroad iron and ties, coming this way.

MR. COWAN. To what extent have the cars been loaded this past year with other freight than live stock?

MR. SOWDER. To quite an extent. They have been used for hauling dead freight going west. I have seen 10, 15, or 20 stock cars in a train that have dead freight in them.

If we moved the live-stock cars empty and used other cars for the material, we would simply have blocked our track with trains of other cars, and would have been obliged to use the engines for hauling those other cars, whereas we had to get the material there for rebuilding, and so utilized the stock cars that were going into that territory below.

It will be observed that the cars thus loaded were going west. It is admitted that during the period of construction and rebuilding in this territory we employed the live stock cars when going west for cattle to carry railroad material to this same section, rather than move them empty. Mr. McKenzie, also refers to the use of stock cars for other freight, declaring he had seen them loaded with coke when he needed cars. We have large shipments of stock from the El Paso district, for which we have to supply cars. Mr. McKenzie's shipments originate on the Fort Worth and Denver City road and we could not in justice deliver cars to that line for him while our own shippers were calling for cars in the El Paso district. There is also a heavy demand for coke from Colorado at El Paso, and we utilize these stock cars going south to haul this coke. I venture to say that in the case of almost every complaint, examination into the attending circumstances would exonerate the railroads from any fault, which could have been avoided. Railroads are not infallible nor have they been immaculate, but self-interest forces them to do the best they can. This is especially true in connection with the stock traffic, although I want to go on record as saying and being able to prove that so far as the long-distance live-stock traffic is concerned it is, at the present rates, less remunerative to the railroads than almost any other traffic they haul. In a great many cases they would be better off without it.

I want to emphasize that point: Our live-stock traffic is the poorest traffic we have; and we give it more attention, and it costs us more money, than any other traffic we have. Mr. Richards referred to the fact that they wanted to get to a certain market. We do the

best we can. We start out with the train with the shortest possible limit of getting to the market with all conditions favorable. Something happens, and we are three or four or five or six hours late, and miss the market for that day. Then, if the market goes down, they bring in a bill for us to pay because we did not get the cars there; and we are fools enough to pay it. I do not believe they could collect it in a court of law; but we pay the bill. On the Burlington road some years ago we got around that by paying the bill at the market price for the difference, and taking the cattle and selling them when we got them in; and we actually made money by doing that in Dakota in one year.

Another thing we have to take account of in connection with the furnishing of cars: When for any reason prices of such commodities as live stock and grain advance materially, everybody wants to ship at once. The number of cars ordered is far in excess of the ability of any road to furnish, usually also in excess of the amount of freight which shippers have on hand. Our records show that not infrequently the cars ordered and furnished in a single month are more than double the number required to move the shipment. The grain shippers are the worst offenders in this regard, but the live-stock shippers are a good second. If the railroads are to be compelled under penalty to furnish the cars, the shippers should be compelled under like penalty to load them.

And right here I want to refer to this question of coal traffic which Mr. Richards explained to you. Year before last and last year, both, we employed a man especially to visit every coal dealer on our line in the months of June, July, and August, when business was light, and solicit them to order coal. He offered to reduce the rate 25 per cent if they would order the coal in the summer; and we also made arrangements with the miners and producers that so far as it was ordered by people who were responsible, and they could do it, they would not ask them for the money until the fall. We could not get a shipper to order a car of coal during the summer months. I say "not a shipper"—perhaps we might have had fifty or a hundred cars, but it was so little that we did not have to put the reduced rate in effect at all. The trouble is that the shippers all wait until their convenience is to be suited, and then expect the railroads to suit that convenience, regardless of whether they can do it or not. And that is the gist of this bill. That is why this bill is presented to you.

The panacea for all the troubles that the live-stock men are heir to, as suggested by this bill, appears to the proponents thereof as both simple and effective, but let us see how it will work out, taking as an example the Fort Worth and Denver City road, where a majority of the live-stock shipments complained of originate. That road has, according to Mr. Cowan's figures, a total of 248 stock cars, all of which would be easily exhausted in a single day's demand. These cars may be hauled to Amarillo and delivered to the Santa Fe for shipment, say to Evarts, S. Dak., to which point a very large number of cattle from this territory go. Inasmuch as at the time when stock is shipped from this territory it is also moving in large quantities from other districts, all the available stock cars on the Santa Fe would be fully employed in shipments from points on its own line, and it would have no empties to deliver the Fort Worth and Denver City line in return for the loads without denying cars to its own shippers, so that under

the proposed law it would be a case of penalty if you do and penalty if you don't. That is, if we refuse the Fort Worth road cars for cars delivered to us, we would be liable to a penalty. If we refused our shippers cars for their orders, we would be liable to a penalty; and we could not do both. We have not got the cars, and we can not get them.

The Santa Fe haul on such a shipment would be to Kansas City, where in turn the cattle will be turned over to one of the roads running to Omaha, and at that point delivered to the Chicago, Milwaukee and St. Paul to be transported to Evarts. Every one of these various connecting lines must, of course, protect the shippers on their own lines under penalty, and, having no empty cars which they can return in exchange for the loads delivered to them, would probably also be held for penalty on that account, and here is where the question of penalty does not solve the problem. The Fort Worth and Denver City, having exhausted its supply and not being able to get cars, can not serve its shippers at all. Under the best conditions its cars going to Evarts could not be returned in less than three weeks' time, and meanwhile it would be out of business.

The fact that we have to pay a penalty does not help the shippers out in the least degree. They want the cars. They do not want the penalty. They would not get it if they wanted it, because the penalty would be to the Fort Worth road and not to the shipper, although that, in turn, I presume, would go to the shipper, because in the order on the Fort Worth road for the car the penalty would accrue there also. But what they want is cars and not penalties, and all the penalties in the world will not bring those cars back from South Dakota in three or four or five weeks.

The difficulty is now overcome to a great extent through the furnishing in advance by connecting lines of empties to such roads as the Fort Worth and Denver City, but when a road is subject to penalty for not furnishing cars to its own shippers it is not going to send its empties, if it has them, to a connection. The entire scheme is wholly impracticable. If you ask what is the remedy, I can only answer, "There is none," nor is any necessary. In a business involving a movement of hundreds of thousands of cars some delays, both of cars and in transit, are inevitable. They always have happened, and they always will happen, the only wonder being that they are not very much more frequent than is the case. A percentage of such complaints as compared with the total movement is very small, and while I have no doubt that the losses are serious to the individuals affected thereby, they are no more so than attaches to any other line of business.

Mr. ESCH. You mentioned the fact that the stock business on your road was the least profitable on the road, and in fact you preferred not to have it.

Mr. PEABODY. Long-distance stock traffic.

Mr. ESCH. Yes. It was the stock-raising business that developed the Panhandle region, was it not?

Mr. PEABODY. Yes, sir.

Mr. ESCH. The development of the Panhandle region developed other traffic on your line outside of stock raising?

Mr. PEABODY. Yes, sir.

Mr. ESCH. It was the stock-raising industry on that line that helped develop Kansas City. Anything that developed that would increase your traffic to and from that point. Is it therefore a fair test as to the remuneration from a given class of freight to simply say, "We only get so much profit from it," without also taking into consideration the indirect advantages which come to the line? Is it not on the same theory that the Government allows a 2-cent rate for second-class mail matter because the advertising in newspapers and magazines sent at the second-class rate develops a whole lot of first-class mail?

Mr. PEABODY. Of course, the building up of the country develops a large business for a railroad; but it is not the cattle business that develops the country. Those cattlemen wish we would stay out of there with our railroads so far as developing the country is concerned. They oppose our settling up that country; because the more you settle up the country the more you restrict the pasturage facilities for the cattle and the fewer cattle can be raised. In the old days they used to have a range there where they could go all over the country; and it is gradually being restricted. You remember that in the old days they used to drive clear up into Kansas and to Abilene and Fort Dodge; and, by the way, I have seen 20,000 head of cattle in Fort Dodge in a single day. Would the railroad be obliged to furnish all the cars for those 20,000 head? They would come in on the drive there, and they used to come across that country. I represented the Missouri, Kansas and Texas road when it first built into Texas in 1872; and I think I made the first cattle rate that was ever made out of Texas by rail. I made it simply by asking the cattlemen how much it cost to drive, and made my estimate just a little less, so that they would ship by rail instead of driving. That is the way the cattle rates were made, without any thought as to whether it would pay or not; and that is the way those southwestern rates became established.

A few years ago (only five or six years ago) I entered into a careful computation to ascertain the relative earnings of cattle and other freight, principally because of this suit—no; it was before the suit of the Texas Cattle Raisers' Association for a reduction of the rate. I proved to all of our Western lines that our cattle rates were absolutely unremunerative, and we raised the rate; and we have a suit pending now before the Interstate Commerce Commission on that very question, which has been urged ever since 1903, I think, when they started it. It is not settled yet. The rates are all out of proportion to the service that is rendered on the cattle—I mean, now, as compared with the rates on other freight. But none of us knew whether they paid or not until within the last five or six years. We had not gotten as far along in railroading as that until lately.

The CHAIRMAN. Gentlemen, I have a letter here from Messrs. Britton & Gray, transmitting a letter from Mr. N. A. Stedman, and two letters from Messrs. Terry, Cavin & Mills, in which they discuss this same subject. I judge, from a very casual scanning of the papers, that they discuss to some extent the statements made by Mr. Cowan either before this committee or before the Senate committee. Messrs. Britton & Gray ask that these papers be made a part of our record. Without objection, I will direct that that be done. Is there objection?

(There was no objection; and the papers referred to are as follows:)

INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY,

LEGAL DEPARTMENT,
Austin, Tex., March 9, 1908

Messrs. BRITTON & GRAY,
Washington, D. C.

GENTLEMEN: Mr. J. W. Terry, solicitor for the Gulf, Colorado and Santa Fe Railway Company, has shown me a copy of his letter of March 8 to you, commenting upon statement of Mr. S. H. Cowan, appearing on page 19 of the Senate record in reference to Senate bill No. 3644.

I think that I have a reasonably accurate recollection of the events that transpired in the last legislature of Texas and that resulted in the enactment of the statute defining the duties of railroad companies with respect to furnishing cars for the shipment of freight, the interchange of cars between railroad companies at junction points, etc. As I remember the occurrences, Mr. Terry has given a substantially correct, if not perfectly exact, history of the same. I do not recall any particular in reference to which he is inaccurate.

I unhesitatingly concur with Mr. Terry in the statement that Mr. Cowan was mistaken when he stated that Mr. Terry and myself agreed with him upon the passage of the bill that became a law or any other bill upon the subject. My recollection is that at the conference to which Mr. Terry refers, in which Mr. Terry, Mr. Cowan, Mr. Dorsey, Mr. Pawkett, and myself participated, the details of the bill which had been drawn by Mr. Cowan were exhaustively discussed, and that while we all agreed upon certain alterations and additions, when the conference closed there were several points upon which no agreement had been reached. The matter being in that condition, on the evening of the same day all of the gentlemen who had engaged in the conference appeared before the joint free conference committee of the senate and house of representatives of Texas and discussed at some length the various provisions of the bill which Mr. Cowan had drawn with each other and with the members of the committee. I do not recall all that transpired before the free conference committee, but I am reasonably certain that in respect to differences in some instances the committee sustained the features of Mr. Terry and myself and in others sustained those of Mr. Cowan.

Mr. Terry and myself were desirous, in order to avoid the confusion incident to having more than one law upon the subject, that if the Cowan bill should become a law, former laws of the State regulating the furnishing of cars should be repealed. While there may have been some opposition to this position, yet I am sure that a decided majority of the committee, as well as Mr. Cowan, recognized its reasonableness. Not having before us the various provisions of former laws relating in one way and another to the subject, it was agreed by the members of the committee and Mr. Cowan that I should prepare a section or sections to be incorporated in the bill that would relieve the railroad companies of being subjected to more than one law and more than one penalty upon the same subject. Accordingly, the next day I prepared as sections 7 and 8, to be added to the bill, the following:

"SEC. 7. That the penalty prescribed by article 4576, revised civil statutes of Texas, as amended by an act approved April 17, 1901, and by article 4539, revised civil statutes of Texas, and by subdivision 4 in connection with subdivision 2, article 4572, revised civil statutes of Texas, shall not apply to the violation by any railroad company of any requirement of this act or any requirement, order, judgment, or decree of the railroad commission of Texas, made in pursuance of this act, and that the penalty prescribed in this act shall be exclusive of any and all other penalties for the violation of its provisions or of any requirement, order, judgment, or decree of the railroad commission of Texas by any railroad company.

"SEC. 8. That articles 4497 and 4500 of the revised civil statutes of Texas, as amended by an act approved March 28, 1899, and articles 4498, 4499, 4501, and 4502 of the revised civil statutes of Texas be, and they are hereby, repealed."

There having been several alterations of and additions to the bill as originally drawn by Mr. Cowan before its presentation to the joint free conference committee, and that committee having made other alterations and additions, my recollection is that the committee requested me to have the bill in the form in which the committee agreed upon it copied and to add thereto the sections which I wrote as sections 7 and 8, and accordingly I did rewrite the entire bill, adding those sections, and that, having rewritten the bill and added those sections, I gave it in its perfected form to a member of the committee.

Within a day or two after I had copied the bill and had added sections 7 and 8 I was astounded to learn that the bill as it had been approved by the conference com-

mittee at the meeting which Mr. Terry, Mr. Cowan, and myself had attended had passed the Senate with the omission of sections 7 and 8. I subsequently learned that there had been a subsequent meeting of the committee and that at that meeting sections 7 and 8 had been stricken out. I complained to Mr. Neblett, a house member of the committee, that the measure as it passed the senate was not in accordance with my understanding of what the committee had agreed upon, when he informed me that he was not present at the second meeting of the committee and did not know that sections 7 and 8 had been stricken out. He said that he would endeavor to have them incorporated in the bill in the house, but it seems that he was unable to do so.

I have gone somewhat fully into the history of the amendment of the bill by the addition thereto of sections 7 and 8 for the reason that while I had not given my assent to several of the provisions of the bill I should have made a most vigorous and earnest protest against its passage in any form if I had known that sections 7 and 8 as I drew them were not to be features of the measure.

I wish to say that as attorney for the International and Great Northern Railroad Company, which I then represented, I did not desire the passage of any law upon the subject of the furnishing of cars by railroad companies as an original proposition, but that, learning that the passage of some law by the legislature was unavoidable, I favored the substitute, mentioned by Mr. Terry in his letter, introduced by Mr. Neblett, member of the house from Navarro County, as I regarded that as the most reasonable and elastic measure that I had heard proposed. If there was to be any legislation upon the subject, I preferred the Neblett bill.

When, however, after the passage of that bill through the house, the senate refused to concur in its passage, and a joint free conference committee was appointed, seeing that it was probable that the bill which Mr. Cowan had prepared would likely form the groundwork for legislation upon the subject, I cooperated with Mr. Terry in seeking to get the Cowan bill in the least objectionable and fairest form.

In short, my idea was that the railroad companies would be compelled to accept the Cowan bill, and accordingly I did what I could to rid that bill, as far as possible, of objectionable features.

While I have no doubt, from his misunderstanding of my attitude upon the subject, Mr. Cowan is under the impression that I agreed to the passage of the bill approved by the joint free conference committee at the meeting mentioned, yet he is mistaken in supposing that I agreed to anything upon the subject in the sense of giving a willing mind thereto. And I am sure that if Mr. Cowan has not forgotten the facts, he will recall that what I wrote to be added as sections 7 and 8 was agreed, at the meeting of the committee, to be incorporated in the measure. The incorporation of those sections in the bill would have relieved the railroad companies from some oppressive regulations and would, for that reason, have reconciled me to the passage of the Cowan bill in its altered form more than anything else connected with the matter.

Not having made any agreement in the sense of favoring the passage of the Cowan bill, either as originally drawn or as altered by the committee, otherwise than as the best thing in a bad situation, it is not necessary for me to go into the question of how far I had authority to represent the railroad companies generally in respect to the matter. If, however, it is of any importance, I would say that while I had no authority to bind any other railroad company than the single one I represented, yet I believe that the other companies would have sanctioned any agreement that Mr. Terry and myself might make in respect to the matter. I think that they would have probably adopted what Mr. Terry and I did, having confidence in our judgment and believing that we had done the best thing that could be done under the circumstances.

Very truly, yours,

N. A. STEDMAN.

GULF, COLORADO AND SANTA FE RAILWAY COMPANY,
LAW DEPARTMENT,
Galveston, Tex., March 8, 1908.

Messrs. BRITTON & GRAY,
Washington, D. C.

GENTLEMEN: I thank you for sending me copies of hearings on Senate bill No. 3644 and House bill No. 13841. I note the following statement of Mr. Cowan, appearing on page 19 of the Senate record:

"Senator DOLLIVER. Have you any evidence that the railroads regard this scheme as a practicable, workable scheme?"

"Mr. COWAN. I have. When this bill was prepared by the authors of it, in connection with the Interstate Commerce Commission last year, it was widely copied, and we

took it to the legislature of Texas. A number of bills were there pending in various forms to regulate the railroad service. At the close of the session we got a conference committee from the house and the senate. We copied this bill, made it applicable to the Texas commission, substituted the Texas commission where the Interstate Commerce Commission appears here, and I made an agreement myself with the railroad representatives, Hon. J. W. Terry, representing the Santa Fe line, and Hon. N. A. Stedman, of Austin, representing the Gould lines, and the two of them representing all lines in Texas at the legislature. I made an agreement with them for the passage of that bill, and it is on the Texas statute book to-day, the railroads believing it as much an advantage to them as to the public.

"Senator NEWLANDS. Is that identical in terms with this?

"Mr. COWAN. Almost; it was framed, of course, with respect to the powers of our commission and certain other statutes, but the substance of it is precisely the same."

Mr. Cowan made a similar statement to the House committee, which appears on page 36 of the House record. As I have heretofore advised you, Mr. Cowan is wholly in error in his statement that the Texas railroads desired the passage of the act to which he refers. The Texas legislature in 1887 passed an act prescribing the time in which cars should be furnished on the demand of a shipper, accompanied by a deposit of 25 per cent of the freight charges, and prescribing a penalty for failure to furnish the cars and a penalty against the shipper for failure to load the same when furnished or to promptly unload them at destination. This act, as amended in 1899, is printed on page 123 of the senate record, and now comprises articles 4497 to 4502 of the revised civil statutes of Texas. In *H. and T. C. Ry. Co. v. Mayes*, the Supreme Court of the United States held this act void as applied to interstate shipments. Subsequently the Texas court of civil appeals at Fort Worth held the act void as to all shipments. This decision of the Fort Worth court was reversed by the supreme court of the State after the adjournment of the regular session of the Texas legislature of 1907. In the early part of that session the senate passed a bill, introduced by Senators Hudspeth and Green, which I have never read, but which I understand amended the articles above mentioned so as to confine the same to State shipments, with the view of avoiding the effect of the decision of the court of civil appeals at Fort Worth. Subsequently Messrs. Bryan, Carswell, and others, members of the house, introduced a very drastic measure concerning reciprocal demurrage, supplying cars, interchange of cars, that loaded cars should make an average speed of so many miles per hour, etc. Representative Bryan went before the house committee, when it was in executive session on another bill, and secured a favorable report. The railroad representatives remonstrated against this action, and asked that the bill be recommitted so that they could have a hearing. This was denied. Mr. Bryan and his associates and others, however, stated that they would like to hear the railroads' side, and an informal hearing was had before Bryan et al. and three or four members of the house committee, at which the writer protested against the passage of the bill and criticised various of its provisions, and also presented a written argument that had been prepared by the vice-president and general manager of the Gulf, Colorado and Santa Fe Railway Company. Other railroad men were heard at this informal conference. Subsequently Mr. Bryan indicated that when his bill came before the house he would amend it so as to some extent modify some of its most radical features, but even with these proposed modifications, the bill was more radical than the one that was finally passed.

Hon. R. S. Neblett, member of the house from Navarro County, told me that in the temper of the legislature some bill would be passed and that he thought the most conservative action that could be had would be a substitute referring the questions involved to the railroad commission, with power to act. Thereafter, when I had the opportunity of saying anything about the matter, I advocated Mr. Neblett's substitute. I knew that the legislature either did not have time or, in any event, would not accord the railroads a sufficient hearing, and that we would at least obtain from the railroad commission as much time to present the railroads' side as might be desired before that body acted. Mr. Neblett's substitute was also strongly and actively supported by Mr. Pawkett, secretary of the Fort Worth Board of Trade, and Mr. Dorsey, secretary of the Texas Grain Dealers' Association.

When the senate bill was reached on the house calendar, Mr. Bryan offered his bill as a substitute. Mr. Neblett offered his substitute, and the Neblett substitute was finally adopted by the house in lieu of the senate bill after a hot contest between Mr. Bryan et al. and Mr. Neblett et al. The senate refused to concur and called for a free conference. When I learned of this action I asked Senator Hudspeth why he objected to the Neblett substitute. He told me that Mr. Cowan was in the city; that Mr. Cowan represented the cattlemen, who were largely his constituents, and that it was natural that he should to some extent be guided by Mr. Cowan's views, and that Mr. Cowan was not satisfied with any of the pending measures, and suggested that I

see Mr. Cowan. When I met Mr. Cowan he informed me that he had a substitute which he proposed to offer, or have offered, before the conference committee. I told him what Senator Hudspeth had said and suggested that Judge Stedman and I should like to read his substitute and discuss the measure with him, to which Mr. Cowan assented, and on the same afternoon Messrs. Cowan, Dorsey, Stedman, Pawkett, and the writer spent probably two hours together. At times the discussion between Messrs. Dorsey and Pawkett and Judge Cowan became a little warm.

Mr. Cowan objected to the Neblett substitute on the ground that in his opinion the rules that might be prescribed by the railroad commission could not be applicable to interstate shipments, and that his clients, the cattlemen, were chiefly interested in interstate shipments. He was of the opinion that the Texas legislature could pass an act which would remove the objections of the Supreme Court of the United States and be applied to interstate shipments. Judge Stedman and I criticised Mr. Cowan's measure in many particulars. Some of our suggestions were accepted by Mr. Cowan, but, assuming that the conference was had for the purpose of agreeing on a bill and binding the railroads and the legislature of Texas, and that we had the authority so to do, we wholly failed to agree. On the same evening all of the gentlemen who participated in this conference appeared before the conference committee and engaged in a discussion with each other and heard the discussion between the members of the committee. Mr. Cowan's substitute was taken as the basis of the discussion. The conference committee sustained several of our objections to Mr. Cowan's measure and amended the same accordingly and refused to allow others that were made. Some of the amendments put on Mr. Cowan's measure by the conference committee were over his opposition. The conference committee, while we were present, with the assent of Mr. Cowan, agreed that the articles of the statutes before mentioned should be repealed so that when the new act was passed we would not have two statutes regulating the supplying of cars. The repealing clause, for some reason unknown to me, was omitted, so that we now have in Texas two statutes apparently covering the same subject, and, to use the common saying, the railroads do not know where they are.

After seeing Mr. Cowan's substitute I had no opportunity of conferring with any railroad official other than Judge Stedman, who was in the same position that I was, being merely an attorney. I had no authority on behalf of any particular railroad, or the railroads in general, to agree to any bill. Believing that some bill would be passed, it was simply my duty to urge conservatism in an effort to get a moderate measure. So far as I know, Judge Stedman had no greater authority than I had. Even if Judge Stedman and I had had such authority, how it is possible for Mr. Cowan to claim, on the facts above recited, that we agreed to the passage of a bill, passes my comprehension.

Mr. Cowan is equally in error in his statement that the substance of the Texas act, as passed, is precisely the same as Senate bill 3644. To make Senate bill 3644 correspond with the Texas act the following amendments are required:

1. Insert after the word "duties," line 2, page 2, "as to traffic which with ordinary foresight and diligence could be anticipated."

2. Strike out "promptly," line 13, page 2, and insert after the word "same," line 14, same page, "within a reasonable time."

3. Strike out "promptly," line 16, page 2, and insert after "deliver," in line 17, page 2, "within a reasonable time."

4. Strike out "promptly," line 1, page 3, and insert after "transport," same line, "within a reasonable time."

5. Insert after "penalties," line 22, page 3, "of attorney's fees or as otherwise." At this place the Texas act reads: "It shall not on such failure be liable to the penalties of attorney's fees or as otherwise herein prescribed." The word "of" where it occurs between "penalties" and "attorney's fees" was evidently a clerical error and should have been "or."

6. Insert after "deemed," line 12, page 6, "prima facie."

7. Insert after the word "prescribed," line 11, page 7, "and if it shall fail to do so, then within a reasonable time."

8. Insert after the word "for," line 13, page 7, "and if it shall fail to do so, then within a reasonable time."

9. Strike out beginning with the word "or," line 13, page 7, and ending with the word "hereof," line 14.

10. Strike out beginning with the word "damage," line 16, page 7, to and including the word "to" in line 19, and insert "damages as may result to such shipper and all special damages of which such railroad company had notice at the time of the shipment or which shall occur after written notice thereof, and shall be liable in addition thereto for an amount equal to."

11. Insert after "live stock," line 21, page 7, "green fruit, vegetables, or other perishable freight;" and strike out of line 22 "double the" and insert "the shipper for."

12. Insert after the word "Commission," line 20, page 9, "and in no event shall any railroad company be required to furnish any cars to any connecting line, except to exchange for other cars reasonably suitable for the transportation of freight."

13. Strike out all of section 5 to and including the word "offense," in line 6, page 10, and insert: "That every railroad company which shall willfully, by its own gross negligence, or by the gross negligence of its agents having charge and management of the matter of furnishing cars, fail or refuse to furnish or exchange cars, as herein provided for, or to transport or deliver the same, within the time prescribed by the Commission, or if not so prescribed, then within a reasonable time, shall, in addition to other liabilities herein provided for, forfeit to the United States for each of such violations not less than \$1 nor more than \$100 for each offense, and each day of such failure or neglect as to each car which it by said willful or gross negligence shall fail or refuse to furnish or exchange, shall be treated as a separate offense; such penalties."

From the above it follows that the Texas act of 1907 is not in substance precisely the same as Senate bill 3644. Without undertaking to comment on each difference, the Texas legislature struck out of Mr. Cowan's proposition double damages in case of cattle shipments and other perishable freight and confined the same to ordinary or single damages. This of itself is a wide line of demarcation between Senate bill 3644 and the Texas act. The Senate bill if enacted into a law with this double-damage provision would in a great many cases amount purely to the confiscation of property under the forms of law. It would create in the State of Texas, if not elsewhere, a cattle-damage bureau, in comparison with which the personal-injury bureaus would fade into insignificance. An enterprising attorney would say to the cattle man, "I will give you all of the damages actually sustained and one-half or one-fourth of the second issue, or double damage, reserving the balance of the second issue for my fee," and the probability of making amicable settlements, which often occur between shippers and the railroads, would be minimized, and the courts of some sections of the country would be flooded with litigation, imposing an additional burden on the taxpayers of the country to support additional courts. While the legislature of Texas has been by a great many criticized, and to some extent justly, as radical, yet it was sane enough to strike out of Mr. Cowan's proposition its double-damage feature. A number of the other differences were intended to conform the measure to some extent to the common-law rule, which is the fairest rule to the shipper and carrier that the ingenuity of man can devise. Penalties are not recoverable under the Texas act except in case of willful or gross negligence. The ordinary failure of mankind when endeavoring to do what they can is not to be penalized.

Mr. Cowan is very prolific, judging from the record in this case, in his criticism of the railroads, and if he has read the newspapers he could with equal facility criticize the construction of the American Navy or the conduct of the Spanish-American war on the island of Cuba. The question is whether Mr. Cowan could have done any better in either of the three cases than the parties actually in charge of the conduct of affairs. After a thing has happened every schoolboy can see something that might have been done to prevent it, and it is very easy for a jury to say that a railroad or anybody else has been negligent. Schoolboys of tender years in debates criticize the faults of Lee and Grant in the conduct of military operations.

It is my understanding that it was the intention of the conference committee, as per amendment No. 5, not to allow attorney's fees unless there had been some fault greater than an ordinary or casual failure, though in the haste in which the work of the conference committee was performed, it being in the last days of the session, this intention may not have been clearly accomplished.

It was the intention of amendment No. 10 to reconstruct the elements of damages prescribed by Mr. Cowan's proposition as now contained in the Senate bill and to preserve the rule of *Hadley v. Baxendale*—which has been enforced by the Texas courts—to the end that the carrier should only be held liable for ordinary damages, unless it had notice of the special damages when the shipment moved or thereafter had written notice. In other words, it was the intention of the legislature to preclude some representative of the shipper from meeting some railroad man on the street and saying, "If my shipment does not arrive at a certain time, great consequences will follow." In such case written notice was exacted.

Referring to amendment No. 6, Mr. Cowan's measure as modified by the conference committee merely made the time specified in the act in which cars should be furnished *prima facie* evidence of what was a reasonable time, and leaves it open to the court and jury to decide what was, under all the circumstances, a reasonable time.

Referring to amendment No. 12, my understanding of the same as contained in the Texas act is that a railroad company may not be required to interchange cars with a connecting line unless the connecting line is prepared to deliver a number of cars equal to the number received by it. In other words, that the Gulf, Colorado and Santa Fe would not be required to deliver cars to the Frisco unless that line was prepared to deliver an equal number to the Gulf, Colorado and Santa Fe, and that if the Frisco was not so prepared to do, the Gulf, Colorado and Santa Fe could hold its cars on its own line and perform its charter function of transporting freight between its own termini instead of scattering its cars indiscriminately over the North American continent.

Yours, very truly,

J. W. TERRY.

GULF, COLORADO AND SANTA FE RAILWAY COMPANY,
LAW DEPARTMENT,
Galveston, Tex., March 17, 1908.

Messrs. BRITTON & GRAY, Washington, D. C.

GENTLEMEN: In further verification of the assertion heretofore made by me that Mr. Cowan's statement before the Senate and House committees that the railroads desired the passage of a bill by the Texas legislature with regard to furnishing cars, interchange of cars, etc., was in error and unsupported by any evidence, I now quote from the argument prepared by Mr. F. G. Pettibone, vice-president and general manager of the Gulf, Colorado and Santa Fe Railway Company, which was published in the newspapers during the session of the Texas legislature and used as a protest against House bill No. 490, which was one of the bills for which Mr. Cowan's draft was finally substituted:

"All shippers have access to the courts of the country to prosecute railroad companies for their failures, both for failure to furnish cars and for failure to move their freight to destination with reasonable dispatch. Why legislate further? The proposed measure further requires that when a car is delivered to a connecting railroad that railroad must, within forty-eight hours, furnish the line from which it received the car another car or else be penalized at \$5 per day per car. What would be the result in the case of our Galveston freight terminals? With a shortage of ships in this port and cars piling up on all of the railroad tracks, the railroads entering Galveston would be obliged to immediately send such cars to the Galveston railroad company's tracks. They would have no way of delivering this freight to the ships, and as they have no cars, and there is no reason why they should have, how would it be possible for them to deliver any cars back to the lines delivering to them, and what reasonable argument could be presented which would require this railroad to pay the delivering lines \$5 per day for each failure? These penalties in some instances would amount to hundreds and thousands of dollars per day. The railroad companies do not ask that these terminal companies be penalized for failure to interchange cars, and why should the public require them to change each other such amounts? The bill requires further that a railroad 20 miles in length, for example, shall furnish its equal proportion of the equipment with a railroad 100 miles in length, and if the shorter line happened to be the road upon which the business originates, and that is not infrequent, it would be obliged to furnish all of the equipment, or at least a great deal more than its share. This is unfair and should be eliminated from the bill."

From the table presented by Mr. Cowan and found on page 42 of the proceedings before the House committee, and from Mr. Cowan's comments before the Senate and House committees, he undertook to create the impression that there were more cars available to the railroads in 1906 in proportion to the tonnage than there were in 1900. In Mr. Cowan's tables he has taken no account of the great number of cars owned by the so-called private car lines, and in order to prove his case he would have to include the cars owned by these private car lines, such as the Armour Refrigerator Line, the Canada Cattle Car Line, Street's Stable Car Company, etc., and show that these private car lines had likewise increased the number of their cars from 1900 to 1906. Whether such a showing would prove his case or not I have no statistics before me upon which to express an opinion. However, I am under the impression, from a letter written by Mr. Kendrick, that the private car lines have not so increased the number of their cars. I do not at present know what is the explanation of Mr. Cowan's assertion concerning motive power. I make these suggestions for the benefit of the gentleman who may prepare the argument on this subject.

It may be asked why we are so much opposed to the passage of this bill, when we have managed to get along for so many years under the Texas statute providing for penalties for failure to furnish cars on demand. See page 123 of Senate committee proceedings.

The inconvenience of putting up one-fourth of the freight money in advance, and the fact that if the shipper failed to load the cars within forty-eight hours after they were placed, or failed to unload them at a certain time at destination, he would be subjected to a penalty of \$25 on each car, acted as a deterrent to the promiscuous making of applications under that statute. I have now before me for a legal opinion a claim by a shipper for a refund of penalty assessed against him by the railroad company for failure to load the cars within forty-eight hours after the same were placed for loading. Further, the Texas courts have been very strict in requiring parties claiming penalties of this nature to comply strictly with the terms of the statute, and wherever the courts have found a fault in the proceedings of the shipper under the statute they have refused to allow a recovery of the penalty. In other words, the Texas courts have exacted of parties demanding a pound of flesh a literal compliance with every technicality of the law. So far as I can now recall the Gulf, Colorado and Santa Fe Railway Company has never paid a penalty under this statute.

Under Mr. Cowan's scheme, if enacted into law, the shipper under a proper charge could not recover actual damages without being allowed double damages, and there would be no alternative other than to deny any recovery to the plaintiff or to allow him double damages. Possibly this is the reason why the scheme of double damages was adopted instead of giving the form of penalty which has heretofore been usual in such cases. Further, up to this time we have maintained the position that under this statute, or others, we could not be required to send cars off the line, and have therefore maintained control of the equipment.

The Texas statute here referred to only applied to a part of the traffic of each company, while Mr. Cowan's scheme, if enacted, would apply to all of the traffic. Any business might stand a bad thing operating only on a part of the business, but might be ruined if the same thing applied to all of the business.

I observe that in undertaking to sustain the constitutionality of an act requiring railroads to send cars off their lines, Mr. Daist in his memorandum, printed on pages 56 to 59 of the proceedings before the House committee, seems to be of the opinion that there is no limitation in the grant of authority to Congress to regulate commerce among the States. However, the amendment to the Federal Constitution which prohibits Congress from depriving any person of property without due process of law was a restriction on all of the powers granted by the original Constitution, including the commerce clause, so that that clause is controlled by the due process clause.

Mr. Cowan seems to be of the opinion that railroad companies may be required to send their cars all over the country, on the idea of the power of the Government to take private property for public use. I do not think, however, that this embraces the power to take property already devoted to one public use and turn the same over to another public use of like character. In the case of Central Stock Yards Company v. Louisville and Nashville Railroad Company, which I believe is still pending in the Supreme Court of the United States, the deposition of Mr. M. H. Smith was taken, who testified largely concerning the necessity of permitting each railroad to control its own rolling stock. It may be advisable to procure a copy of this deposition and file the same with the Senate and House committees. Will you kindly advise whether the Central Stock Yards case has been decided by the United States Supreme Court?

I observe that in Mr. Cowan's statement before one of the committees he was of the impression that the words "suitable cars" in the proposed act meant any kind of a car suitable for the transportation of freight, and that under this construction if the P. and N. T. Ry. Co., which only operates about 140 miles of track, should deliver to the Fort Worth and Denver at Amarillo 500 cattle cars loaded with cattle, that the Fort Worth and Denver could pay off its debt by delivering to the P. and N. T. 500 box cars, which, during the cattle shipping season, would be of no earthly use to the P. and N. T., but would simply be in the way.

When Mr. Cowan's measure was before the conference committee of the Texas legislature it did not occur to me that it could receive such an unreasonable construction.

I wrote you last week explaining fully the differences between the bill now pending in Congress and the act passed by the Texas legislature, and inclosing arguments of Messrs. Pettibone & Green against reciprocal demurrage, etc. Will you kindly advise whether that letter was received? Please also advise whether you received letter from Judge Stedman, which was mailed at Austin on March 9.

Yours, very truly,

J. W. TERRY

Mr. FAULKNER. Mr. Chairman, I have one other gentleman here whose statement I do not think will take long, if you will hear him.

The CHAIRMAN. We will hear him.

STATEMENT OF E. D. LEVY, ESQ., OF SPRINGFIELD, MO., SUPER-INTENDENT OF TRANSPORTATION OF THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

Mr. LEVY. I am employed by the 'Frisco Railroad as superintendent of transportation, and as such I have actual charge of the distribution of all freight and passenger cars. I desire to enter an objection to this bill because I believe (in fact, I know, and think I can demonstrate) that a car-for-car exchange is impracticable.

What the railroads are facing to-day is the proposition of increasing the proportion of loaded mileage to total freight-car mileage. This bill, if it should become a law, will very greatly decrease the percentage of loaded-car mileage and increase the percentage of empty-car mileage to the total freight-car mileage on the various roads.

Mr. STEVENS. What effect would that have on rates?

Mr. LEVY. On rates? I do not know, sir. I do not handle rates at all. I do not know anything about rates. It would have this effect: It would diminish the ability of the railroads to move traffic. They would be expending their facilities and energy in moving empty cars when they should be moving loaded cars. I will explain how that will work.

Mr. KENNEDY. It would necessarily increase the cost of hauling—that is, what it would cost the railroads, would it not?

Mr. LEVY. Yes, sir; it would increase the cost. Whenever you increase your proportion of empty mileage to total freight-car mileage, you increase your cost of handling the net tons which are the freight in the car.

Mr. RICHARDSON. Because you decrease the earning capacity?

Mr. LEVY. The earning capacity of the cars; yes, sir. Now, unfortunately, the traffic does not move evenly. From St. Louis we haul more tons of freight west bound than move east. We have absolutely no control over it. We move the traffic as it comes to us. We are a producing railroad. We produce the products of the soil; and they are marketed, generally, a large portion of them, beyond our rails, to the southeast and to the south, to the Gulf ports.

Take an illustration of the eastern roads at St. Louis giving us every day 100 cars of freight more than we have of east-bound freight: Under this law they have the right to demand the return of an equal number of cars. We will then have to haul empty cars into St. Louis in order to fulfill our duty under this bill to give them a car for a car. It might appear, if you did not know the conditions, that inasmuch as our tonnage is west bound, we could do that without additional expense. We can not, however, because we have a rather large east-bound stock movement; and that stock is handled at a reduction of about 20 per cent from the bringing of the engines for dead freight. So while we might have—

Mr. KENNEDY. Right there, if it will not interrupt you, let me ask you this question: If you do not send your cars off your own line, but unload there at the station, you will have to haul that surplus of cars back empty; will you not?

Mr. LEVY. I do not just understand what you mean, sir.

Mr. KENNEDY. The fact that there is a disparity between the west-bound movement and the east-bound movement makes it necessary for some empty haul that can not be avoided?

Mr. LEVY. Yes, sir; but at different times of the year.

Mr. KENNEDY. Yes.

Mr. LEVY. The eastern lines would not be willing to wait until we could haul them back, though.

Mr. KENNEDY. The bill provides for an exchange of cars, if you allow the car to pass off your line.

Mr. LEVY. I am going to get to that point after a while.

Mr. KENNEDY. In order to keep your cars where they are needed for loading, you will have, if the disparity is in favor of the eastern bound movement, to send some of your cars, at least, back empty?

Mr. LEVY. We do at certain times of the year; but I wanted to tell you why, if we attempted to do that——

Mr. KENNEDY. Just let me follow that thought up: Your connecting line will have the same disparity in its movement on to the destination. Now, will it not have to bring its cars back here to take your freight?

Mr. LEVY. Do you mean our southern lines?

Mr. KENNEDY. If you unload at the connecting point in place of transferring cars?

Mr. LEVY. Why, if the eastern lines would dump that freight on us at St. Louis and transfer it, we would most assuredly have to haul cars in there to move it out

Mr. KENNEDY. Yes.

Mr. LEVY. But there is nothing that decreases the efficiency of the cars as a whole or increases your cost more than transferring, because you have got to have two cars side by side, transferring them, when they ought to be moving. The road I represent does not practice transferring going or coming. We do not do it except in very extreme cases. We do not do it to keep our cars home when business is heavy, and we do not do it in order to prevent the other road's car coming on our line when business is easy, as it is to-day. We take the cars and run them through to destination, because we do not believe in transferring as a general principle. But I was going to tell you about this situation in St. Louis.

We have to haul sufficient stock into St. Louis at certain times of the year and sufficient empty box cars to protect our merchandise westbound, loaded, that comes to us at our freight houses over our platform to about equal the capacity of the engines coming eastbound. We also handle a large movement of fruit and poultry, which is necessarily moved at a reduced tonnage. We would have to expend money and energy and engines in moving these empty cars eastbound at a time when the same cars were needed for loading in the producing territory of our line.

I spent six years at the port of Galveston for the Santa Fe Railroad, and I should like to recite an instance that actually happened in 1906. We had a tremendous crop of cotton. This bill does not provide any more ships to carry this cotton, or any more facilities on the part of the receivers who have not got the facilities. There were on Galveston Island at that time several thousand cars of cotton that there were not ships there to take; and also, by reason of the congestion, the island got so full of cars that the movement was retarded even when the ships were there. The cars were banked up almost to the Red River on a good many railroads, including the Santa Fe, the Missouri, Kansas and Texas, and others, to such an extent that they embargoed against receiving this freight. That was an unnatural

condition, and if they had had to provide sufficient cars in order to give us at the Red River an empty for a load (there is no traffic coming north at that time of the year in box cars) it would have imposed an unnecessarily harsh burden on them; and, in fact, they would have had no place to store the cars, you might say, in a period of this kind. It is not practicable for a railroad to own enough cars to do that, because the movement is only during three or four months of the year at the outside.

On account of the inability of the Gulf lines, the port lines, to give us back an empty for a load, we could not give the other fellow at St. Louis an empty for a load; and the man that hauled the freight to us as an intermediate line from Chicago to St. Louis could not make the Pennsylvania or the Baltimore and Ohio at Chicago give him an empty for a load, by reason of the inability that started at the Gulf of Mexico. There is no question but what a law of this kind will create more empty car mileage, and decrease the efficiency of the cars of this country as a whole. It is a fact that railroads misuse each others' cars sometimes, and in fact very often; but it is also a fact that in doing so the cars of the country are utilized to the highest extent of their efficiency. There is more use gotten out of them from the public than if each railroad did return to the other the cars delivered to it.

Mr. RICHARDSON. Have you not some penalty that you provide for being attached to a company that has your car and will not send it back?

Mr. LEVY. No, sir; we have not. We did have at one time, prior to December 1, 1906. The per diem rate then was 25 cents a day for the first thirty days, and after thirty days, upon a written demand on a printed form from the owner, you paid him 75 cents a day as a penalty. That was a total of a dollar a day. But that dollar a day did not get the cars home when you needed them; because if that road had business, it could earn enough out of those cars to pay that penalty, and the roads could keep them going between each other and break the penalty. Every delivery started a new transaction.

Mr. RICHARDSON. That is, they would take your car that would come off of your main line loaded with freight consigned to a certain point, and when that was taken out they would take your car and use it about their own business?

Mr. LEVY. Yes, sir; and I did the same way with the other fellow's cars.

The CHAIRMAN. I wish you would explain the operation of the provision of the bill that requires the delivery of an empty (and I suppose of the same kind) for each loaded car delivered to a line, in a district that is served by the Wabash, the Great Western, the Rock Island and the Burlington. Each of those roads goes to Council Bluffs, St. Joseph, and Kansas City; and the stock business is a very important item to all the people of my district. Suppose that a road coming up to Kansas City from Texas delivered 100 cars there, we will say, to the Burlington road, or 100 cars to either of the other roads that I have named at either Council Bluffs or Kansas City, and the bill required the return of 100 cars in each instance for cattle shipment?

Mr. LEVY. You are speaking of stock cars, sir?

The CHAIRMAN. Yes, sir; of stock cars. What would become of the people that lived in my region of the country just at the time they wanted to ship their stock?

Mr. LEVY. I am going to tell you that so far as stock cars are concerned, the railroad I represent does exactly what this bill says, with one or two exceptions; and I will explain that.

Stock cars are a special class of equipment. At the times our stock is moving it means that you have to move them back empty to the point where they originate; and stock in the territory with which I am familiar moves at certain times of the year from certain defined ranges to certain defined pastures, and then again from certain defined pastures to certain defined markets. We are to-day accumulating, and have in Texas, some 600 stock cars empty that we will give the Santa Fe and the Missouri, Kansas and Texas—an empty for a load of stock. We have done that for several years. We will take that stock up to pastures on our own lines to unload it. We will take those stock cars right back to Texas; we can not undertake to load them. There is nothing to load them with from that territory; but if there was we could not afford to do it, because this rush is on and we must provide the cars for it. There are one or two exceptions where there are little cross-country roads that the cattlemen want to pasture their stock on that we do not own. They are coal roads, so they do not own any stock cars; but we allow our stock cars to go to them, and they return them. We are going to this year.

When the stock goes to market on our line it is not marketed on our own rails, except in very rare instances. Then it goes through the stock yards at Kansas City or St. Louis and unloads there for feed and rest; and this bill says that there shall not be any objection to furnishing other suitable cars when it is ready to unload. Consequently, as far as stock cars (which are a special class of equipment) are concerned, and which at times when the stock is moving mean 50 per cent empty mileage, this bill would not work any hardship on the Frisco railroad; but it would on box cars. Stock cars at certain seasons of the year are 50 per cent empty mileage. You never get more than 60 or 65 per cent loaded mileage out of them. But we get 80 to 90 per cent loaded mileage out of box cars; and by doing that it can readily be seen that we increase the efficiency, the ton hauling capacity, of those box cars. If we undertook to handle box cars, which form the greatest proportion of our equipment, the same as we do stock cars, one-half empty, we could not exist on it. It would be too expensive. And, unfortunately, sometimes the empty movement would have to be made and is made in the direction of our volume.

The CHAIRMAN. What is your road?

Mr. LEVY. The St. Louis and San Francisco. We have quite a large road, about 5,000 miles of track, and it is scattered over a large territory. The commodities are varied.

Mr. KENNEDY. So far as your road was concerned, we would not need to pass any such law.

Mr. LEVY. Not for stock cars.

Mr. KENNEDY. But let me see if I can not suppose a case of this kind: Suppose here is a prong running out from the main line, and it runs out 200 miles into a stock-raising country. It is an independent road, and connects with another road and runs 25 miles over that road and then connects with another one; so that this receiving road gets but 25 miles of the haul of those stock cars. We will say that this prong owns six or seven hundred cars, enough to take care of its

freight if they are returned to it. Here is a road that only hauls those cars 25 miles, we will say; so that the freight it gets from that trade amounts to practically nothing. It runs away off there four or five hundred miles through a cattle country. When these cars come back to this road, in place of putting them in where they ought to, promptly, they use them in their trade, and pay a penalty of a dollar a day.

Mr. LEVY. That could be done; but the road at the prong that owned those cars would not allow them to go over there unless——

Mr. KENNEDY. The roads pretty nearly all look to a condition that they can make the most of, do they not, as a general rule?

Mr. LEVY. Oh, yes, as a general rule; but stock cars are generally given better treatment by a railroad company than any other class of car. You can draw hypothetical cases here, perhaps, that never exist; and I can draw a good many myself.

Mr. KENNEDY. I do not know whether such a case does exist or not; but that is about the only thought that came to me that would be an excuse for putting that provision in. Everyone that has spoken to us upon the subject of exchanging cars has candidly, and I think truthfully, said—I believe you did yourself—that when you had the cars of another road you used them.

Mr. LEVY. Yes, sir.

Mr. KENNEDY. And they do that with yours?

Mr. LEVY. Yes, sir.

Mr. KENNEDY. Now, that might not work general injury to any special cases of that kind; but it would be almost ruinous to the business of this new road you speak of.

Mr. LEVY. It would affect this prong very seriously.

Mr. KENNEDY. It would put it clear out of business; and this connecting road would be making a great deal more profit out of those cars by using them where they would get more freight out of them than if they had returned them.

Mr. LEVY. This bill, if it becomes a law, would cause railroads in attempting to comply with it to buy more cars. They would have to have more cars; and with that greater number of cars, handling them strictly under the provisions of this bill, they would get less out of them. We have had some experience—this is something that we have gone through, and that we know will happen; and it will not take very long to tell about it.

In the fall of 1906 and the early spring of 1907 we had unprecedented orders on us for cars of all kinds. There were a great many complaints made about shortage of cars, some of them to the State commission; some of them went to the Interstate Commerce Commission, and some of them were made to us direct. We started out to increase the efficiency of our cars, pending the time that we could receive more from the builders. We employed 23 men, known as traveling car hustlers or traveling car agents, at a salary of \$100 a month and their expenses, and two of them in the large cities at \$125 a month and their expenses, which represented an expenditure of \$42,000 each year, in an effort to increase the efficiency of our cars. These men not only did missionary work with our own people, but with shippers and receivers of freight as well; and we did run up the average mileage of our cars greatly in excess of what it had been. But at that time, due to the fact that we were a producing railroad, we had from two to five thousand cars on our railroad system and

foreign less than our ownership. So we set out in the spring and in the early summer of 1907 to accumulate cars. We said: "We are going to get enough cars on our tracks this summer, when they are easy, so that we will not have any shortage this fall." For the first six months of the year 1907 we had on our line an average of 20,664 cars available for service. That is exclusive of bad-order cars and cars used in our own service.

These cars were available for commercial service. By reason or accumulating these cars we actually seized and stored them wherever we could get our hands on them. We seized them and stored them, and paid the per diem on them during the summer months when the other fellow was willing to let us do it to make a little money on his cars, so that we would have them in the fall of the year when they were needed. We actually stored in one district of a hundred miles (the hay-loading district of Kansas and Missouri) pretty nearly a thousand good-order box cars, to be used when the hay and grain commenced to move. During the last half of 1907 we had an average of 26,170 cars available for service, which was an increase of 5,506 over the average for the first half of the year. We really got more cars on our line than we could move. We overreached ourselves. We provided cars to the shippers and stored them as Mr. Richards said he stored them in the Northwest, so that the shippers were actually able to load the cars quicker than we could move them. So with 20,664 cars on our road for the first half of 1907 we made an average of 29.03 miles per car per day. When we got 26,170 cars (an average of that many) on our rails, or an increase of 5,506 cars, we made 23.30 miles per day—a decrease of 5.73 miles per car per day, or 19.74 per cent decrease in the average performance of those cars, because we had cars in excess of our ability to move them quickly. We did ourselves an injury, and perhaps did the shippers an injury, because we were not able to move the freight as fast as we were the previous half. During that time, with that increased number of cars, we moved for the second six months' period of the year 1907 1,567,744,155 net tons of freight 1 mile, as compared with 1,577,549,847 tons the previous six months, when we had 5,500 less cars; or, with the increased number of cars, we were only able to move 9,805,672 less tons 1 mile, or a decrease of sixty-two one-hundredths of 1 per cent.

I mention that to bear out my statement to you that if we have to increase the number of cars on our line before we can increase the other facilities in proportion, and have to make more empty mileage with box cars (our main class of equipment), we are going to decrease our ability to move freight and our ability to serve the public.

I will cite another instance. One of our main lines runs from Kansas City, Mo., to Birmingham, Ala.—a distance of 735 miles—and passes through Memphis, 482 miles from Kansas City. We have, generally speaking, two trains of fresh meat and packing-house products a day to move from Kansas City to Memphis and Birmingham; and those being a special class of traffic, we have to turn around and haul them right back to Kansas City empty. We have moving from Tupelo, Miss., where we receive them from the Mobile and Ohio, on that same line, and from Memphis, Tenn., where we receive them from the Illinois Central, something like six to eight hundred cars of bananas every month; and by reason of having to give such fast service, we handle very few cars to a train. Perhaps ten to

fifteen would be an average train—not because we can not handle more, but because they do not come to us in more than those quantities, generally speaking. We have to haul those banana refrigerators or ventilated cars southbound empty, and have to haul the meat cars northbound empty. So the providing of so many kinds of special equipment for special traffic, that can not be used for other freight, tends to decrease the transportation ability of the carriers.

Again, at St. Louis we had a congestion resulting from a number of hundreds of cars being held for us by our eastern connections. We could not receive them; we could not move them during that time. We had to move westbound from one to two trains daily of empty stock cars, because we needed them for the movement of stock, and we could not hold them for load even if the loading was available. Twenty-five cars is an average train westbound from St. Louis with our present power, and if we had not had to move those trains, one or two trains (just, say, one train) a day, westbound, it would have increased our transportation ability 25 cars a day for thirty days. That would have been 750 cars of freight that we could have moved westbound and practically cleared up that congestion.

I mention that to bear out the statement that I made at first that if this bill becomes a law and we endeavor to comply with it we are going to have to make this empty-car mileage at an increased operating expense, which is going to decrease the efficiency of the cars of this country as a whole, because the traffic does not move back from where it comes from at the same time of the year. These cars that we take down into Oklahoma and Kansas and load to the southeast and the south with cotton and with grain gravitate back to the east and the north and the northwest and other lines of traffic, or, if they do not in the spring of the year, they move back empty.

Take the Texas lines, such as the Santa Fe, Mr. Peabody's line here: It would have to give all of the roads which are its connections empties for a load. Being a port road, where a number of thousands of cars sometimes are held awaiting ships, they would have to double their equipment, and then perhaps would have to pay penalties if the same conditions existed again that existed in the fall of 1906; and it would impose upon them a very harsh burden. It has always been recognized in railroad business that the originating line, the large line that originates the traffic, furnishes the cars, the equipment; and the road that delivers it, and perhaps at a low proportion of the rate, does not get as much as the originating line. Am I not correct in that?

MR. PEABODY. Yes.

MR. LEVY. The originating line usually gets the higher rate, even though its service is a small number of miles. The port lines in Texas, with which I am familiar, can haul that cotton or grain a hundred miles or so farther at a less rate, and have to provide cars and take care of the port detention.

Every year we lose cars in the fall. There is no railroad in the United States that would be benefited more by a car-for-car exchange than the Frisco railroad. In the month of October, 1906, alone we lost to our connections 2,500 cars more than they delivered back to us. We had to take our medicine; and we produce the freight and naturally have to equip ourselves to handle it. When we went to work and accumulated this large number of cars on our line in the

summer of 1907 we had on order a number of thousands of new cars, and we thought, naturally, that they would be delivered to us the following spring, on account of the builders being unable to turn them out as had been done with our previous orders. But the builders delivered us, in the fall of 1907, 4,808 new cars, of which 3,028 were box cars. That in itself replaced a large portion that we would lose. And another thing that operated against us was the fact that the cotton did not all move in a rush, as it had in previous years. The farmers' associations held it. We provided cars to take care of it in a rush, and they held it; and we had to hold the cars and pay a per diem on them.

There is another thing I might mention. Some of the territories that produce the largest amount of freight do not consume in any proportion to what they produce. We have a lumber region from St. Louis to Memphis, a division representing some 700 miles of track, where we have to send 50 cars every day of the year in order to provide cars for lumber shipment; and we have had to haul those cars empty from the State of Texas by way of Springfield, Mo., and sometimes via St. Louis, and others via Big Creek (which is via Memphis, Tenn.), to get empties. Unless we practically doubled our equipment we would not be able to supply that line with any reasonable degree of promptness, because we would have to make so much empty mileage in carrying out the provisions of this bill; and if we had a large through traffic, as we have, we would be giving cars at one end and getting them back at the other and hauling them east to the detriment of producers on our own rails.

We object to this reciprocal demurrage feature because it is unjust; it is unfair. First, it seeks to penalize the railroads for something they are most anxious to do. We are in business, we have transportation to sell. Like other business men, we want to sell as much as we can. I have had some experience under this Texas law of \$25 a day demurrage at both ends of the line. The railroads can make more money out of that than they can make in hauling freight. I know of an instance connected with Mr. Peabody's road where a man wanted to ship some oil from Saratoga, Tex., in the oil field, to a point on the Missouri, Kansas and Texas, which railroad did not own any tank cars. The Missouri, Kansas and Texas connected with the Santa Fe at Cleveland, and the freight was to be hauled to a point which I think was named Eldridge—a point four or five hundred miles out of Fort Worth. They hauled it perhaps 30 or 40 miles. The man deposited his 25 per cent of the freight rate and we furnished the tank cars. We hauled them up to Cleveland and called on the Missouri, Kansas and Texas to give us tank cars to transfer that oil into or to give us cars for exchange. They did not own any; it was a special class of equipment, and they did not reach any oil territory. They hustled around and got the cars, but by the time they got them several hundred dollars of penalty had accrued on each car. We said that we would deliver the oil to them if they would advance the accumulated penalties; that we had run the risk of the penalty at the other end. They would not do that, and we unloaded the oil—the shipper allowed us to unload the oil and burn it in our engines for the freight charges. That was a special class of equipment, and the Missouri, Kansas and Texas, not having any oil business, had not provided any oil cars.

Another thing about the reciprocal feature: We have always felt that if we did not furnish cars with reasonable promptness the shippers had their recourse at common law. They do collect from us in that way every once in a while. If we do not transfer them with reasonable promptness, and the shipper is damaged, he has his recourse at common law, and collects damages from us. But if that shipper or receiver of freight detains our car, which we let him have for transportation purposes and not for storage purposes, either in the loading or the unloading, our only recourse is a reasonable charge of a dollar a day. And if, by reason of this receiver or shipper of freight tying up our car at a dollar a day, and being willing to pay it, we are deprived of that car and can not furnish it to somebody else who wants it, we must pay a dollar a day, and in addition must pay \$25 to a hundred dollars a day for each and every day. Now, that is not fair. This man deprives us of that property, and all we can collect from him is a dollar a day; and still we must pay the other fellow a dollar a day, and in addition \$25 to a hundred dollars a day. Then the bill goes on further to say that that does not in any way impair the right of the shipper or receiver of the freight to collect from us at common law. There is a multiplicity of penalties there, as against a simple penalty of a dollar a day that the shipper is liable for.

Another thing: The bill allows stock shippers double damages, making it manifestly more profitable to be damaged than it is to get to market—doubly profitable.

Mr. KENNEDY. You are talking of the Texas law?

Mr. LEVY. I am talking of this bill right here. There is one thing I would like to say in connection with the stock business: The Government has a law to-day that we can not confine stock in cars more than twenty-eight hours, or more than thirty-six hours when the shipper signs a written release, without giving it feed and rest. We recognize that that is a just law, and we try to comply with it. But to-day there are pending against the Frisco Railroad penalties aggregating \$120,000 in suits brought by the Government, and there was no disposition whatever on the part of the Frisco Railroad to violate that law. During the time of the congestion we furnished cars for cattle in excess of our ability to give transportation, and contingencies of all kinds would arise which would bunch the cattle. For our own protection, when the rush to the market came on in July and August of last year, we made a rule that we would not furnish, even though we had them, more than 100 or 125 cars for loading to St. Louis in any one day, or 75 for loading to Kansas City in any one day. Both of them had to travel over a single line of road until they come to where the two lines branched off, one for St. Louis and one for Kansas City. We did that because the cattlemen wanted to ship all on one day, and we were congested with other business.

The country down there is developing very fast; there were emigrant outfits, a man with his household goods and his stock of chickens and his cows and his horses, moving west in that country; and we could not delay them indefinitely. We had to give them reasonable service, or we were liable to them. So, in self-protection, we had to set a limit, and advertise to these stock men that we had set that limit, and they had to book their orders in advance; and we filled them in the order in which they came, up to 125 cars for St.

Louis and 75 for Kansas City. Then if they asked for cars for that day, we would say: "We are booked up full for that day, but we will give you any other day you want that we are open;" and we did not have any trouble with those men on that account. They realized that it was reasonable that we could not move all the stock loaded on Friday and Saturday and get it to St. Louis Monday and Tuesday, even though we had the cars. But under this bill we can be penalized for that if the shipper is disposed to be arbitrary, and sees his neighbors who have gotten their orders in first getting to market, and he is damaged by reason of our failure to furnish cars for that market. We are penalized; and not only are we penalized from \$25 to \$100 a day for each case each day, but we have to pay the double damages that that man might fancy that he sustained, plus reasonable attorney's fees. It amounts to punitive damages.

Another reason why we object to the reciprocal demurrage feature and this damage feature is because it opens up an avenue for very cleverly concealed and legitimate rebates.

The CHAIRMAN. Explain that.

Mr. LEVY. Suppose there is a big shipper, and the law says that we shall pay him a dollar a day for cars that we do not furnish within forty-eight hours. Suppose we allow him to order them and do not furnish them?

Mr. KENNEDY. By arrangement?

Mr. LEVY. By arrangement or understanding. I, who handle cars, might not know anything about it. Suppose some man connected with the railroad should say to this man: "Put in your order for 50 cars a day; I know they can't furnish them." The records would be there. There would be his written order for that number of cars. He might have in his warehouse a sufficient amount of freight that he did not want to ship, that he could have loaded into those cars; and you could not prove that he did not want to load that freight. He might have warehouses at some other part of the country that he might say he wanted to ship that freight to, even though he had no sale for it, and hold it. It opens up an avenue for rebates in that way; and it also opens up one in this double-damage feature, where it says that the railroad shall pay a man his damage. We think the shippers have sufficient remedy at common law. If they are damaged, we usually have to pay for it; and if they are damaged they have got to show where they are damaged and how they are damaged. There is no law which says we shall pay them a certain amount.

The CHAIRMAN. Have you any other gentlemen to be heard?

Mr. FAULKNER. No; I have no others to-day, Mr. Chairman; but I was going to ask permission of the committee to do this. I have the statements of four or five of these operating officers who are not able to reach here in order to meet the committee. They have sent me their written statements, and I thought I would ask the committee to allow me to present those statements (I failed to bring them down this evening) to the chairman to-morrow, and, if he approved, to have them incorporated into the evidence.

The CHAIRMAN. If they are not duplications—

Mr. FAULKNER. Oh, there are no duplications.

The CHAIRMAN. Have you anyone for to-morrow that you want to have heard?

Mr. FAULKNER. Only Mr. Paulding and myself on these bills that were passed some time last Wednesday, I think it was. I would not like to bring the committee back just for that when we are right here and can come before the committee whenever it is convenient for them. We will be very brief in our statements.

The CHAIRMAN. Very well. Then, if there is nothing for to-morrow, without objection the committee will adjourn.

(The committee thereupon adjourned until Friday, March 27, 1908, at 10.30 o'clock a. m.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Friday, March 27, 1908.

Committee called to order at 10.40 a. m., Hon. W. P. Hepburn in the chair.

CAR SHORTAGE.

STATEMENT OF MR. J. W. MOORE, OF CHICAGO, ILL.

The CHAIRMAN. We have only an hour, Mr. Moore, and there are other gentlemen who desire to be heard.

Mr. MOORE. The suggestion, Mr. Chairman and gentlemen of the committee, is very kind on your part, and I want to relieve your anticipations early in this session by saying that this question has been so thoroughly discussed that I will consume but a very small portion of that hour.

The Culberson-Smith bill would seem to furnish the basis for some legislation that has been badly needed in the West for the last four or five years. Removed from the scenes of these railroad evils, as most Congressmen are, it is hard for them to appreciate the basis of the complaints that we and others desire to file with you.

The CHAIRMAN. What business are you engaged in?

Mr. MOORE. I am a small land owner, but actively in the live stock commission business at Chicago.

I say it is very hard for the average Congressman to appreciate the evils of which we complain, and we regard it as our duty to ourselves, our clients, and to you to make a visit occasionally to Washington and consult with you in reference to these things. Our presence here must not be construed as hostile to the railroads, neither do we come down here to educate a Congressional committee; but we appreciate that we are cognizant of some things that probably you are strangers to, and therefore, with your permission, I want to file some complaints, some statements, and some affidavits.

In order to shorten the session, may I have the consent of the committee to have that appear in the record?

The CHAIRMAN. Yes; please hand them to the stenographer.

Following are the statements referred to:

THE KNOLLEN SHEEP COMMISSION COMPANY,
Union Stock Yards, Chicago, March 3, 1908.

Mr. J. W. MOORE,
Union Stock Yards, Chicago.

DEAR SIR: Referring to the copies of affidavits and letters, also my personal affidavit, which I have handed you to-day, will say that these statements have not been selected at all from our files on account of being aggravated cases. We have taken them up as

they come, and our files contain a great many more such cases; and we have volumes of correspondence with shippers and also with railroad companies concerning delay in furnishing cars, and bad service.

In February, 1907, a committee appointed by the National Wool Growers' Association met a representative committee from various railroads at Cheyenne, Wyo. All of the principal railway companies of the West and the Middle West were represented by the heads of their traffic and operating departments, and, in the case of the Union Pacific, by no less a personage than Mr. A. L. Mohler, vice-president and general manager.

The subject under discussion was poor service in the handling of live stock. The railroad men admitted that the service was bad. They said that all that it was possible to do was being done to better the service.

Nevertheless, it was brought out that very few of the details regarding delay in handling stock had been brought to Mr. Mohler's attention by his subordinate officers; and Mr. C. J. Lane, first assistant general freight agent, admitted to Mr. Mohler, in a public meeting, that Mr. Mohler had not asked for more stock cars and engines by the operating department "simply because it was impossible to get the cars over the line that they already had."

I have letters from railroad men wherein they say that they have been doing the very best that they possibly could do to handle live stock satisfactorily to the shippers, and that they can not see wherein they can improve their service in the future to any great extent.

Such statements, taken in connection with the affidavits and letters I have handed you to-day, are certainly a justification of the passing of drastic laws compelling our public carriers to give the shippers over their lines reasonably good service.

Yours, respectfully,

A. J. KNOLLIN.

COUNTY OF COOK, *State of Illinois*, ss:-

Know all men by these presents that I, A. J. Knollin, of the city of Chicago, county of Cook, and State of Illinois, being first duly sworn, do depose as follows:

Acting in the capacity of president of the Idaho Sheep Company I ordered 20 double-deck cars to load with sheep at Soda Springs, Idaho, on the 25th of September, 1906, the order being placed with the Oregon Short Line Railroad Company at Soda Springs, Idaho. The cars were not furnished until the 7th of November, causing a delay of forty-two days in moving this shipment. Provided the lambs could have been loaded at the time desired, they could have gone to market as fat lambs. They were, however, shrunk so that it was necessary to put them all on feed and a heavy loss was incurred. It is my remembrance that the above order was placed with the agent at Soda Springs, Idaho, on or about July 25, 1906.

On or about the 19th day of July, 1907, I placed an order with the agent of the Oregon Short Line Railroad Company, Soda Springs, Idaho, for 20 double-deck cars for shipment of the Idaho Sheep Company lambs, to be loaded on the 19th of September. The lambs were sold by contract to be delivered f. o. b. cars on that date. Cars were not furnished until the 4th day of October, 1907.

There are from 1,000 to 1,200 cars of sheep and lambs shipped from Soda Springs, Idaho, each year. Owing to a great many shipments being delayed, sheep and lambs are held close by to be in readiness for shipment, eating off the grass closely, and it is impossible to secure pasturage and hay, and shipments so held, especially lambs, shrink very fast.

I consider it a conservative estimate that the loss to the Idaho Sheep Company in 1906 and again in 1907 amounted to \$10,000 by reason of such delays in furnishing cars.

A. J. KNOLLIN,

President of the Idaho Sheep Company.

Subscribed and sworn to before me this 3d day of March, 1908.

[SEAL.]

W. B. INGWERSEN, *Notary Public.*

(Commission expires November 27, 1911.)

STATEMENTS AND AFFIDAVITS OF POOR RAILROAD SERVICE ON SHEEP SHIPMENTS.

KANSAS CITY, November 26, 1907.

The KNOLLIN SHEEP COMMISSION COMPANY,

Live Stock Exchange Building, Kansas City.

GENTLEMEN: This is to certify that I ordered from the Denver and Rio Grande Railway Company 50 double-deck cars to be delivered as follows: Ten cars September

20, 30 cars October 15, and 10 cars for October 25, 30 of said cars to be delivered at Coulton and 20 at Price, Utah.

Six of said cars were delivered September 23, and 23 November 13. In the meantime, owing to the fact that I could not get cars, I made arrangements with parties of whom I purchased the sheep to take back enough sheep to make out 21 cars, said railroad company delivering in all 29 cars.

As I could not get cars to market said sheep when they should have been marketed, while the market was good, I am forced to stand a heavy loss, as the market has declined from \$1 to \$1.50 per hundredweight since the time cars were ordered for, and request you to make claim accordingly against the railroad company.

Yours, truly,

JNO. F. MARLMAN.

Subscribed and sworn to before me this 27th day of November 1907.

JAMES RATCLIFF, *Notary Public*.

(My commission expires March 28, 1910.)

Know all men by these presents that I, G. W. McKinley, of the county of Fremont, town of Rexburg, in the State of Idaho, being first duly sworn, do depose as follows:

On the 6th day of August, 1907, I placed an order with the Oregon Short Line Railroad Company for four double-deck cars to be used for a shipment of sheep from Rexburg, Idaho, October 5, 1907. These cars were not delivered until the 27th day of October, a delay of twenty-two days. A neighbor of mine left Rexburg with sheep on October 5, the day our cars should have been there, and secured \$7.40 per hundredweight for his lambs on the Chicago market. While I was waiting for my cars the Chicago market broke nearly \$1 per hundredweight and when I reached Chicago was in no better shape.

At 1.30 p. m. on the 27th of October I finally left Rexburg, Idaho, and arrived at Fremont at 8 p. m. on the 4th of November. We left Fremont between 9 and 10 p. m. on the 4th for Chicago via the Chicago and Northwestern Railroad, and arrived at Rochelle at about 10 p. m. on the 5th.

G. W. MCKINLEY.

Subscribed and sworn to before me this 13th day of November, 1907.

HELEN HANNA, *Notary Public*.

(My commission expires June 30, 1908.)

Know all men by these presents that I, A. G. Arnold, of the county of Bear Creek, town of Sage, and State of Wyoming, being first duly sworn, do depose as follows:

On the 3d day of August, 1907, I placed with the Oregon Short Line Railroad Company an order for 15 double-deck cars to be used for a shipment of sheep from Rexburg, Idaho, October 2, 1907. We did not get these cars until the 19th of October, a delay of seventeen days. On Wednesday, October 23, the Chicago market suffered a bad slump and continued to get worse until the time my sheep were marketed, when it was fully 75 cents to \$1 per hundredweight lower than the time when, if my cars had been delivered more promptly, my sheep would have been sold on the market.

A. G. ARNOLD.

Subscribed and sworn to before me this 5th day of November, 1907.

HELEN HANNA, *Notary Public*.

(My commission expires July 30, 1908.)

Know all men by these presents that I, A. M. Carter, of the town of Rexburg, county of Fremont and State of Idaho, being first duly sworn, do depose as follows:

On the 6th day of August, 1907, I placed an order with the Oregon Short Line Railroad Company for three double-deck cars to be used on a shipment of sheep from Rexburg, Idaho, October 5, 1907. These cars were not had until October 27, a delay of twenty-two days. A neighbor of mine left Rexburg with sheep on October 5, the day my cars should have been there, and secured \$7.40 per hundredweight for his lambs on the Chicago market. While I was waiting for my cars the Chicago market broke nearly \$1 per hundredweight and was no better when I reached Chicago with my sheep.

My three cars in a train of sheep left Rexburg, Idaho, at 1.30 p. m. on the 27th day of October. We fed at Green River and had only been on the road twenty hours when we reached Laramie. One of my cars was broken there and the three were set out and held back from the rest of the train, which went on to Cheyenne. This delayed me twenty-four hours and caused an extra feed bill at Laramie. I tried to have the stock yards company at Laramie allow me to transfer the sheep in the broken car to another car but they would not hold the train.

A. M. CARTER.

Subscribed and sworn to before me this 12th day of November, 1907.

HELEN HANNA, *Notary Public.*

(My commission expires June 30, 1908.)

Know all men by these presents that I, William E. Whittington, of the town of St. Anthony, county of Fremont, and State of Idaho, being first duly sworn, do depose as follows:

On the 9th day of August, 1907, I placed an order with the Oregon Short Line Railroad Company for 15 double-deck cars to be used for a shipment of sheep from St. Anthony, Idaho, October 1, 1907. On November 6, 1907, 12 cars were furnished me, but on account of the delay I was compelled from time to time to cut back sheep on account of shrinkage, so that on the date of shipment, November 9, I only had sheep enough in fit condition to fill 9 cars, which were shipped out at arrival at Kirkland, Ill., consigned to the Knollin Sheep Commission Company, on November 18.

At the time my cars should have been delivered I considered all my sheep in marketable condition for mutton, and had my order for cars as given August 9 been filled my stock would have been on the Chicago market during the high time of the year, but through the delay in furnishing cars I have been forced to put them on a very much lower market, and therefore believe I am justly entitled to redress from the railroad company.

WM. E. WHITTINGTON.

Subscribed and sworn to before me this 22d day of November, 1907.

HELEN HANNA, *Notary Public.*

(My commission expires June 30, 1908.)

NOTE.—Forty days' delay on this shipment.

CHICAGO, ILL., October 17, 1906.

THE KNOLLIN SHEEP COMMISSION COMPANY,
Chicago, Ill.

GENTLEMEN: On October 3 I loaded at Oxford, Idaho, two cars of sheep and lambs, numbering 624 head. I arrived at Chicago and the sheep were sold by you October 15. I wish you would file claim for me for damage I was subjected to by reason of the poor service rendered me by the Union Pacific Railroad Company.

I signed my stock contract and loaded out of Oxford about 11 p. m. October 3. My car numbers out of there were 61856 and 12588, waybills 7 and 8. I arrived at Green River the evening of the 4th at about 8 o'clock. We were supposed to load out of Green River at about 10.30 o'clock on the morning of the 5th, but we were not loaded out of there until 2.30 in the afternoon of the 5th. There were 24 cars of sheep all told to be loaded out of Green River that day, including mine, and it took them until 2.30 in the afternoon to load that amount of stock. I arrived at North Platte on Sunday, the 7th instant, at about 9.30 p. m. At Laramie I signed my time contract for a thirty-six-hour run, but they threw me off at North Platte, and notwithstanding the fact that I had signed the time contract the railroad company held my stock at North Platte from 9.30 p. m. until the following day at 10.20 a. m., and did not even unload my sheep. I had nine hours to spare on the time contract which I had signed at Laramie. They unloaded my sheep at about 10.20 on the morning of the 8th. They commenced to load us at about 11 o'clock on the morning of the 9th, and it was not until after dark of that same day that they got power to move us.

This run was absolutely the slowest that I have ever had and the train crew spent about half their time switching and sidetracking between North Platte and Valley.

The railroad company subjected me to this extra unloading at North Platte instead of running right through to Valley, and I wish to file my claim on the basis of shrinkage.

E. BODILY.

CHICAGO, ILL., October 1, 1906.

THE KNOLLIN SHEEP COMMISSION COMPANY,
Chicago, Ill.

GENTLEMEN: On September 15 I loaded at Soda Springs, Idaho, consigned to you, 12 cars, 3,540 head of lambs. I wish you to bill a claim for me for the damage received by reason of the poor service given me by the Union Pacific and Oregon Short Line railroads.

I signed up my last stock contract at Soda Springs at 9.30 p. m. on September 15, but the agent billed us out six and one-half hours prior to that time, which he had no business to do. Our sheep were held in the cars at Green River two and one-half hours for want of power.

We arrived at Rawlins at 7 o'clock p. m., September 16, where the Wood Live Stock Company had in 38 cars ahead of us, which they unloaded, and we were not permitted to begin unloading until 9 a. m., September 17. Our sheep were held at Rawlins in the cars fourteen hours before we began unloading. We were on the road September 15 to September 16, twenty-one hours, before we were compelled to stop by the railroad company at Rawlins to unload. I wanted to sign a release and go on to Laramie, but the company would not allow me to. They insisted on unloading my sheep at Rawlins in the horse pens in a muddy yard. There was no feed to speak of, and the horse troughs were too high for the sheep to drink out of, so the sheep had no water. I figure that the unnecessary shrinkage was at least 5 pounds a head. It cost me two days (forty-eight hours) longer on the road and one extra feed. It also put us on a bad market, when we would have received a good market had we not been delayed. This loss I would ask you to kindly estimate for me. I would figure my total loss as follows:

Shrinkage 3,540 head of lambs, at 5 pounds, 17,700 pounds, at 7 cents.....	\$1, 239
Extra feed.....	35
Total.....	1, 274

In speaking of the company here I refer to the agent at Rawlins and other points mentioned. In the twenty years that I have shipped sheep I have never before received such poor treatment. The agent at Soda Springs began it by billing us six and one-half hours earlier than we were loaded and the agent at Rawlins completed the job by refusing to allow our train to go on.

Yours, very truly,

PRATT & BUCK.
Per WM. PRATT.

[Report made by Mr. C. P. Groot on 12-car shipment of sheep loaded at Soda Springs, Idaho, on the 18th of October, 1906.

On account of the yards at Sidney not being large enough to hold the sheep without crowding, during the heavy snowstorm the sheep were snowed under and 55 head were smothered. The storm occurred on the 23d and it was not until 11 a. m. on the 24th that the railroad company sent men to assist in digging the sheep out. In the meantime myself and men did all we could to get them out of the snow, or a great many more would have been lost.

Respectfully,

C. P. GROOT & SON.
By C. P. GROOT.

Know all men by these presents that I, Leo Farrell, of the city of Chicago, county of Cook, and State of Illinois, being first duly sworn, do depose as follows:

On September 27, 1907, I left Chicago to go to Emmett, Idaho, to receive the Van Dusen lambs bought by Mr. J. M. Wilson, to be delivered at Emmett. I arrived there on the 2d of October, and found the lambs in very good condition. Mr. Wilson asked me at that time what per cent of them I thought would go for the top of the market at Chicago if we could get them on the market inside of ten to fifteen days, and being on the market every day, I told him that 80 per cent of them would go for the top of the market. We expected cars for the 1st of October, some the 5th, and some the 10th, to load three different shipments, and on the 1st of October we sent down the first shipment to a place about a mile away from the station at Emmett, so as to be handy for the cars. We expected cars to be waiting for the sheep at Emmett, but when they got down there no cars were in sight. The train dispatcher of the Oregon Short Line Railroad Company at Nampa, Idaho, promised cars within a few days, and then we sent down the balance of the lambs to Emmett. I called up the train dispatcher at Nampa twice a day, morning and evening, for twenty-five to thirty

days, to find out what he had to say about cars, and he would keep saying that there would be some there in a couple or three days, but no cars ever came.

We had the lambs down near the town where hay was high so as to be handy to load, whereas if we were not expecting cars to come every couple of days we could have taken them back 15 or 20 miles in the country, where hay was cheaper and they could have some grass. The water was very bad where we had the lambs, but it was the only place around where we could get space to keep them and feed them near loading point. On the 17th of October the train dispatcher at Nampa told me that our cars had left Green River to come direct to us at Emmett, but when they got as far as Cokeville, Wyo., some dispatcher gave orders to the conductor to sidetrack them, and they were used by somebody else. The cars were intended direct for us, and October 20 the train dispatcher at Nampa told us that they were stolen from us. At the time the cars came, the 28th of October, there was not 5 per cent of the lambs that would go for the killers here or any other place. After laying four hours on the 28th at Nampa the dispatcher told me there was no crew to take me out ready. We had a very bad, rough run to Montpelier, and lost 45 head of sheep that died. I know if we would have got the cars that were intended for us on the 17th, when the train dispatcher told me that they were coming, that the shrink on them would have been very light, as the last ten days was the worst on them, and the lambs were in good shape at that time.

LEO FARRELL.

Subscribed and sworn to before me this — day of November, 1907.

W. B. INGWERSON,
Notary Public.

[Report made by Mr. Groot on 12-car shipment from Soda Springs, Idaho.]

CHICAGO, ILL., November 3, 1906.

Loaded at Soda Springs, Idaho, October 18, at 6 p. m., 12 cars of sheep; arrived at Green River at 3 p. m. on the 19th of October; arrived at Rawlins at 2.30 a. m. on the 20th; could not unload until daylight. Loaded out at 7 p. m. the same day. Arrived at Sidney, Nebr., at 7 a. m. on the 22d of October; stood on the track four and one-half hours before unloading. There were no facilities for taking care of the stock. Could not feed at all on the 23d. Mr. Camblin, manager of the yards at Sidney, advised the railroad company that he could not feed and handle that amount of stock (there were already there five loads of cattle). Fed the sheep straw (fed them a little hay—all there was) on the 24th; on the 25th started to load at 1 p. m. They could not spot cars for us. Loaded until 1 a. m. next morning; had to quit until daylight—the electric lights went out. Finished loading at 11 a. m. on the 26th. Arrived at Grand Island at 3 p. m. on the 27th. Sheep had been without a particle of feed forty-eight hours.

Respectfully,

C. P. GROOT & SON,
By C. P. GROOT.

[Record of trip with 13 cars of sheep from Ketchum, Idaho, to Chicago, Ill.]

Finishing loading at Ketchum, Idaho, on September 1, 7 p. m. Unloaded at Montpelier on 2d instant at 1 a. m.

Loaded at Montpelier at 8 a. m. on the 3d instant. Unloaded at Laramie on the 4th instant at 10.30 a. m.

Loaded at Laramie at 8.30 p. m. of the same date. Unloaded at Grand Island at 11.45 of the 5th.

Commenced loading at Grand Island at 7.50 p. m. of the same date, and laid in the yards until 6 p. m. of the following day, this being twenty-three hours in the yards without feed or water. Arriving at Fremont at 6.10 a. m., finished unloading at Fremont at 9.30 a. m. of the 8th instant.

At Laramie I advised the trainmen that one car was in bad order; there was a broken board in the upper deck near the door. This car was set out at North Platte, and 10 sheep had fallen through the hole in the upper deck and were smothered.

At Montpelier I reported a car to the trainmen. It had a drawhead out, and was set out in Green River, this causing additional feeding expense. There were, of course, feeding expenses attached to both of these cars.

At Grand Island a train of sheep that was loaded three hours after my train was loaded was sent out three hours ahead of my train. The sheep laid in Grand Island in the corrals there from 6 p. m. one night until 11 a. m. next day, and were loaded and

let lie in the yards until 6 p. m., and, having been held off feed for so long, of course it was necessary to stop them at Fremont for feed. Even then they had been over forty hours without feed or water.

The sheep were in fine shape when I started with them, and I am confident the way they were handled on the road there was a loss from 10 to 15 cents per hundredweight on them besides shrinkage.

MIKE KITEZA.

Know all men by these presents that I, James Denning, of Dubois, Fremont County, Idaho, being first duly sworn, do depose as follows:

On Wednesday, October 2, I left Spencer, Idaho, in charge of 26 cars of sheep belonging to Messrs. Denning & Clark, Dubois, Idaho. We had a very good run from Spencer to Rawlins. On Friday, October 4, at 10 a. m. we started to load up at Rawlins, and loaded out at 1.30 p. m. We arrived at North Platte, Nebr., Saturday, October 5, at 7 p. m., where we laid in the yards until 8.30 the next morning before the last of the lambs were unloaded. Our lambs were, therefore, in the cars continuously for forty-three hours without feed or water, which was a serious injury to the entire bunch, and which directly caused the death of 173 head on pasture at North Platte, and also the sickness of 34 head, which we were compelled to leave at North Platte. Four more died in the cars between North Platte and Valley, and four were too sick at Valley to be loaded out.

JAMES DENNING.

Subscribed and sworn to before me this 16th day of October, 1907.

HELEN HANNA, *Notary Public*.

(My commission expires June 30, 1908.)

Know all men by these presents that I, Frank Spaulding, of the County of Fremont, town of Rexburg, and State of Idaho, being first duly sworn, do depose as follows:

On the 6th day of August, 1907, I placed an order with the Oregon Short Line Railroad Company for six double-deck cars, to be used for a shipment of sheep from Rexburg, Idaho, October 2, 1907. These cars were not had until October 27, a delay of twenty-five days. A neighbor of mine left Rexburg for Chicago with some sheep on October 5, shortly after the date my cars should have been there, and secured \$7.40 per hundredweight for his lambs. While I was waiting for my cars, the Chicago market broke fully \$1 per hundredweight and was no better when I reached Chicago with my stock. At Marston, Wyo., the upper deck of one of my cars, O. R. N. 3211, fell down and we pulled out 17 dead sheep at that point. When we got to Green River, six more were found dead in this car. The gentlemen whose signatures appear below helped me pull out these dead sheep. I consider the Union Pacific Railroad Company wholly responsible for this loss.

FRANK SPAULDING.

By S. W. HALL.

Subscribed and sworn to before me this 13th day of November, 1907.

HELEN HANNA, *Notary Public*.

(Commission expires June 30, 1908.)

G. W. MCKINLEY.

J. D. MCCULLOUGH.

A. M. CARTER.

E. L. PRIEST.

[Data furnished by Drovers' Commission Company, Union Stock Yards, Chicago.]

J. R. Bell on February 1, 1908, shipped from Perry Springs, Ill., a shipment of hogs that arrived at Chicago on February 3, 1908, being over twenty-four hours late. This shipment of hogs went only 113 miles when the shipping limit of thirty-six hours was reached, and unloaded at Decatur, Ill., for feed and rest. Then were forwarded to Chicago, arriving as stated above twenty-four hours late.

J. M. Griffith on March 1, 1908, shipped from Blandinsville, Ill., a consignment of sheep to Chicago that was detained en route and arrived in Chicago over twenty-four hours late, making the remarkably low average of 5 miles per hour from the original point of shipment to the destination, Chicago.

J. E. Byram, of Abingdon, Ill., shipped from St. Augustine, Ill., five cars of cattle on October 22, 1907, arriving in Chicago at so late an hour on October 23 that the average running time of the train was about $6\frac{1}{2}$ miles per hour, weather conditions being entirely favorable for rendering good service.

On November 14, 1907, George Carnes, Maysville, Ill.; S. E. Carnes, Pittsfield, Ill.; A. Dunham, New Salem, Ill.; D. Holton, Barry, Ill.; Harvey McLaughlin, Griggsville, Ill.; G. W. McCoy & Son, Hersman, Ill.; R. Carnes, Baylis, Ill.; and Rufus Hitch, Griggsville, Ill., shipped from their respective towns 14 carloads of cattle and hogs, which arrived in Chicago over twelve hours behind schedule time, the train making an average of less than $8\frac{1}{2}$ miles per hour.

Davis Yetter, September 5, 1907, shipped from La Harpe, Ill., and Blandinsville, Ill., six cars of cattle and hogs, which arrived in Chicago the second day after being shipped, ten hours late, making an average of 9 miles per hour.

The foregoing shipments were made under favorable weather conditions for the roads that operated the trains.

We desire to call the attention of this committee, and the attention of Members of Congress in general, to the fact that roads making shipments from Chicago make an average far greater per hour than the roads from points west do on shipments of live stock to the western markets. Doud & Keefer, of Chicago, extensive shippers and exporters, have made the statement that in shipments to New York, N. Y.; Boston, Mass.; Washington, D. C.; Baltimore, Md.; Richmond, Va.; Philadelphia, Pa.; Newark, N. J.; Paterson, N. J.; Portland, Me.; Montreal, Canada; St. Johns, New Brunswick, the average running time of the various roads over which they ship is seldom below 15 miles per hour.

Egan & Norton, of Chicago, large shippers to points east of Chicago, state that their consignments from Chicago to New York, N. Y.; Washington, D. C.; Philadelphia, Pa.; Pittsburg, Pa.; Cleveland, Ohio; Wheeling, W. Va.; Baltimore, Md.; Fairmount, W. Va.; Lancaster, Pa.; and McKeesport, Pa., will average $16\frac{1}{2}$ miles per hour, and on many of the trips the average running time is nearly 20 miles per hour.

These shipments originating as they do at Chicago, where railroad competition for the traffic is great, shows what can be done when railroads make the effort that most railroads are capable of making.

At certain seasons of the year some difficulty in securing cars at Chicago for eastern points is encountered, but on the whole the supply of cars is fair and the running time of trains is good. Chicago has the benefit of keen competition for the transportation, and the good service from there to points east can be attributed to that fact.

[Data furnished by the Bowles Live Stock Commission Company, Union Stock Yards, Chicago.]

On the 7th of October, 1907, Theo. Evans, of Armstrong, Mo., shipped three loads of cattle from Forest Green, Mo., and one load of cattle from Salisbury, Mo., which arrived at the stock yards at Chicago October 10, 1907, being twenty-four hours late, making an average of $9\frac{1}{2}$ miles per hour from point of shipment to place of destination.

J. D. Clark, of Plymouth, Ill., shipped from Colusa, Ill., November 23, 1907, hogs that arrived in Chicago November 24, 1907, at such a late hour that the average running time per hour between Colusa and Chicago was only $7\frac{1}{2}$ miles.

Eastman Brothers, Augusta, Ill., shipped from Augusta, Ill., three cars of cattle at noon, November 20, 1906, and the same reached the stock yards in Chicago at 12.30 p. m., November 21, 1906, making the slow time of $9\frac{1}{2}$ miles per hour in transit.

KANSAS CITY LIVE STOCK EXCHANGE,
Kansas City, March 9, 1908.

MR. JOHN W. MOORE,
Union Stock Yards, Chicago, Ill.

DEAR FRIEND: Replying to your kind favor of the 7th, which reaches me this morning, beg to say that we have been having a great deal of difficulty with the railroads, and while shipments are more or less delayed at the present time, conditions are not nearly as bad as they were some time ago, which fact we attribute to the comparatively light business and the disposition on the part of the railroads to try and encourage new business.

As a general proposition, would say that shipments, particularly from points more than 200 miles, have not been averaging 12 miles an hour; in many instances not over 8 or 10. Shipments from points 400 miles or more are, in many instances, compelled to unload, feed, and water, on account of the expiration of the thirty-six hour law. Engines are loaded beyond their capacity, breakdowns are frequent, and I particularly notice that shipments that we are advised will arrive here on a certain day come in after the close of market hours, or during the following night.

With reference to getting cars, the situation varies in different sections of the country. Our Texas friends advise us that they have no trouble in getting cars, which is undoubtedly due to the efficient railway commission they have in that State. Our Oklahoma and Kansas people get cars at competitive points, but at other places the service is very unsatisfactory. Our Missouri people can frequently get cars by advising their agent that they want to go to St. Louis, which is the long haul, when they can't get them for Kansas City, which is the short haul.

Everybody is agreed here as to the merits of the Smith-Culberson bill. It has the unanimous indorsement not only of the directors, but every commission house in the business. I certainly hope that it or something similar will become a law, and if there is any further information or assistance that I can render or that can come through our exchange don't hesitate to call on me.

In the meanwhile, with sincere wishes for your personal welfare and happiness, I remain

Yours, very truly,

J. C. SWIFT,
President Kansas City Live Stock Exchange.

CHICAGO LIVE STOCK EXCHANGE,
Chicago, March 20, 1908.

Mr. JOHN W. MOORE,
Chairman, Chicago.

DEAR SIR: Referring to the so-called "Culberson-Smith car-service bill," now pending, will say that while at the present time live-stock commission men, members of the Chicago Live Stock Exchange, are hearing very little complaint regarding services rendered by the different railroad companies, this is no doubt true only because shipments not only of live stock, but of other commodities, have materially decreased within the last few months, and for this reason railroads are not only able but anxious to furnish all necessary cars for the transportation of all kinds of live stock and freight.

Most of our live-stock commission men, however, well know that at different intervals throughout the last few years shippers of live stock have been handicapped materially by their inability to procure such cars as were necessary for the movement of their stock to market. This of course has occurred mostly during such times as shipments of live stock were the heaviest, and shippers from the Northwest and Southwest have undoubtedly suffered more by reason of this than the live-stock shippers from the Middle West. However, there have been quite a few cases where shippers from the States of Iowa and Nebraska have been compelled to wait for an indefinite period of time before they could get cars to move their shipments of live stock to market.

At the present time we hear of no complaint from the shippers of live stock from this market to eastern points, but at different times of the year it is of common occurrence that shipments made from here to different sections of the East, and especially to the smaller towns (which would naturally be small shipments), are compelled to wait from two to ten days before they can procure cars to make such shipments, and this not only imposes a hardship on the small eastern butcher and retailer, but on the beef producer of the West and Middle West as well, for when the small butchers throughout the East are unable to procure cars for the shipment of cattle that they buy on this or any other market, it naturally forces them to buy their beef and other products from other sources, and this has the effect of killing off competition that at the present time is so much needed throughout the entire country.

It must be admitted that all of the different live-stock exchanges are seeking to remedy this evil, not from a selfish standpoint, but for the benefit of their beef-producing and beef-consuming clients throughout this entire country and in behalf of the Chicago Live Stock Exchange I hope that you, as chairman of its committee, will be able to convince the honorable committee of the necessity of such a bill as the one referred to.

EMIL H. INGWERSEN,
President Chicago Live Stock Exchange.

Mr. MOORE. Now, I have consumed your time for about three minutes, and with the permission of the chairman I will read my notes, which will take five minutes more, and then I will finish, and render my thanks to the committee for being so gracious to me.

Mr. Chairman and gentlemen of the committee, the Chicago Live Stock Exchange and its patrons want a law enacted covering at least two things; one is the supply of equipment to shippers on a stipulated notice, and the other is good service after the equipment has been secured.

The fact that railroad service is deficient in these two respects is the cause of our coming here and trying to secure a betterment of the situation. The service in reference to the supply of cars and the time made en route to the different western markets has been in a deplorable condition for the last four or five years. Patience on the part of the shipper has resulted in disappointment. The facts recited in the statements and affidavits that I will file with you for record reveal a condition of things that should be corrected by law. It is impossible for the railroads to continually ignore the demands of a set of men that are as worthy and as necessary as the shippers and producers of this country are. We have been promised time and again that the service would be improved, but at certain seasons of the year when traffic is heavy the same outrageous treatment is administered to us.

The question is, Should a law be enacted that would compel a railroad to furnish cars promptly and to render good service after the cars have been acquired? Our answer is, Yes. It can result in no harm to the railroads. It is a reasonable proposition.

I have no kind of doubt but what if the shippers of this country were permitted to make the rates and the regulations governing the transportation of freight, that the rates would be too low for the profitable operation of the railroads, and the regulations would be too stringent for the best results for the railroads. On the contrary, it must be conceded that railroads left untrammelled and unrestricted by law would make the rates too high and the regulations would be too lax for the best interests of the producer and shipper.

Now between these two extremes there should be a body of men, like the Interstate Commerce Commission, to decide what a reasonable rate is and what kind of treatment shall be afforded the shipper. The rate question has been effectually disposed of by the Hepburn law. Now the kind of service should be disposed of by a similar enactment, and our plea here to-day is that the Interstate Commerce Commission shall have its powers extended so that the service may be taken care of in such a way that the interests of the shipper and producer may be reasonably protected. As to the exact form of this law we are not insisting, but we do insist that evils of which we complain shall be remedied. Namely, the supply of cars and the service rendered while in transit.

Closely allied to the supply of cars and the time given a transportation company for furnishing them is the subject of reciprocal demurrage. It would seem to be a reasonable proposition that if a shipper is to be penalized for his failure to remove his commodities from a car in accordance to a time stipulated by law, that it is also proper to penalize a railroad for not furnishing cars within the time required by the proposed law. This is so evident that I am not here to enter into details why this part of our bill should be enacted.

Mr. CUSHMAN. May I ask you a question if it will not interrupt you?

Mr. MOORE. Certainly; only probably I may not be able to answer it.

Mr. CUSHMAN. The thought has often occurred to me that when a railroad charges a shipper for failing to remove goods from the cars within a given space of time, that they are thereby charging the shipper for the use of something that belongs to the railroad, and for the benefit of the shipper, isn't that true—or in order to get the car empty so that it may go into transit again?

Mr. MOORE. Yes; that is true.

Mr. CUSHMAN. Now, the proposition has been presented a number of times as to the converse of that proposition, whether when a shipper orders a car and it is not forthcoming, that he should have a right to a demurrage charge against the railroad. He would then, in that event, be charging the railroad, not for the use of the car that belonged to him, but for the absence of something that belonged to the railroad?

Mr. MOORE. I will answer that question by asking you another question. Is not the shipper entitled to the use of the railroad property when he gives the legal stipulated notice?

Mr. CUSHMAN. Within the capabilities of the railroad. Now let me ask you this question: Is it your idea that the failure of the railroads to furnish cars is due to caprice, or wickedness, or carelessness, or lack of proper equipment?

Mr. MOORE. My idea is that the failure of the railroad companies to furnish cars is caused by things that, if they were prohibited by law, would not happen; in other words, if there was a provision in the law, when you give it the dignity of a legal enactment, that they shall furnish the cars on stipulated notice—we all know that "necessity is the mother of invention," and if they were required to furnish cars in a stipulated time, my position is that they would provide for such contingencies.

Mr. CUSHMAN. But if they did not have the cars how would they furnish them?

Mr. MOORE. I am not pretending to answer a question that presupposes an impossibility, but of course if a railroad has not the cars I am not here to account for their actions when the cars are not furnished. But I want to remind you that whenever a company forces their road through a certain territory, that there remain responsibilities and obligations to the general public that they are bound to discharge by furnishing equipment.

Mr. MANN. They ought to "either fish or cut bait;" or "hatch or get off the nest."

Mr. MOORE. That is my position.

Mr. STEVENS. But supposing they "got off the nest," and went into the hands of a receiver, what would you have them do then?

Mr. MOORE. There are some roads that go into the hands of receivers, but it is not a violent supposition to suppose that this general rule would not include most of the railroads. Of course in that event the contingencies would have to be provided for.

Mr. CUSHMAN. One more question about this public-service proposition. Is it possible for every public-service corporation to serve everybody all the time with all of the service they need regardless of how great the requirements and demands may be at a particular time?

Mr. MOORE. That brings up a question that has not been alluded to in many of these discussions, and I don't know whether that

should be sprung here or not. My position on that is that the railroad equipment must be equal to the largest demands that are made on them at any time of the year.

Mr. CUSHMAN. Does that apply to any other business that you know of?

Mr. MOORE. It does, sir, to the farmer, to the mercantile business, to every vocation, that the help has got to be commensurate with the demand.

Mr. CUSHMAN. If a man is running a lumber business and somebody comes along and wants to buy more lumber than he has got, no penalty attaches to him if he fails to have the lumber.

Mr. MOORE. But if the purchaser gives a reasonable notice to that lumberman, he ought to provide the lumber.

Mr. CUSHMAN. He may if he can, but what penalty would attach if he could not?

Mr. MOORE. None.

Mr. BARTLETT. But if that man could not get the lumber at that lumber yard, he could go to another lumberman and get it.

Mr. MOORE. That is correct; thank you. Your heart is in the right place.

Mr. CUSHMAN. I am not suggesting these things through any hostility on my part, but to show that it would seem that if the demand has outgrown the traffic that the remedy might be for somebody else to build another railroad. And that is a thing that I have never heard anybody advance here. Men have come here by the hundreds, stood at the end of this table, and have suggested that the Government should take over every possible function that a railroad exercises, and that it should tell them what to do, how to do it, when to do it, and what to do it with; but nobody has ever suggested that it might be a good idea for the people interested in the carrying of the traffic to build another railroad.

Mr. ADAMSON. A railroad corporation is a public functionary and is charged with public functions. When it fails to perform them, then its proper place is in the hands of a receiver.

Mr. MANN. You do not undertake, Mr. Moore, to argue the legal aspects of the case?

Mr. MOORE. Oh, no.

Mr. MANN. But the practical necessities.

Mr. MOORE. I am only an ordinary layman, not a lawyer; but I want to remind this committee that the committee from the live-stock exchange, representing perhaps 2,000,000 of patrons, are insisting on a remedy for two things, and that is the supply of cars and the kind of service after the equipment has been furnished.

Mr. ESCH. On the 23d of January, 1906, you appeared before this committee and strongly urged that the thirty-six hour law for stock shipments should be enacted, did you not?

Mr. MOORE. I don't know how strongly I urged it; I was here.

Mr. ESCH. I was simply refreshing your recollection. My recollection is that it was a rather strong statement. Now, I ask, do you find from your experience since the passage of that law that it has had a tendency to lengthen the time of shipment, and thus bring about one of the evils of which you now complain?

Mr. MOORE. I want to be frank with this committee and state that in all probability the railroads have hidden behind that proposition,

and now consume thirty-six hours to do something that they formerly did in twenty-six to twenty-eight hours. My knowledge of the actual state of affairs would enable me to make a statement of that kind, but I would not want that construed as any criticism of the railroads, because they promised at the time that if we would give them just a little more time to make 400 to 500 miles, that they could easily make it and would make it, and we found to our detriment that to have the stock unloaded at small stations on the way was greater injury than would be inflicted on the stock if run to full limit of thirty-six hours. No one has insisted upon that, but I have never regarded the position we took——

Mr. MANN. I think you may give an erroneous impression there. I understand the twenty-eight hour law was never enforced, but that the thirty-six hour law is being enforced.

Mr. MOORE. Oh, well, I don't know about that.

Mr. ESCH. We had a representative of the Frisco line before us this week who said that there were damage suits against his road to the amount of \$120,000 for violation of this thirty-six hour law.

Mr. MOORE. I see by the report of Mr. McCabe that a good many roads have violated the law. The service in transporting live stock to all the western markets is in an undesirable condition. It is not my province to explain all the reasons that cause this bad service. The so-called tonnage system is perhaps the largest factor that enters into the delays.

The CHAIRMAN. Will you please explain the tonnage system as you understand it? We had an explanation of it on the part of another gentleman the other day.

Mr. MOORE. Now, sir, excepting in a general way, I could not. I can only accept the statements of the live-stock agent and railroad employees. I have not the good fortune to be acquainted with railroad presidents, but the general system is to make one engine perform what one and two engines did before; one crew of men under the present tonnage system to perform what two or three did before; in other words, the tonnage is twice, or perhaps more than that, larger than it was prior to five to ten years ago.

Mr. MANN. Tonnage per train you mean?

Mr. MOORE. Yes, sir.

The CHAIRMAN. May we understand that it is now the practice of the road not to move freight until they accumulate such a quantity as taxes the maximum capacity of the locomotive?

Mr. MOORE. Now, Mr. Chairman, I would not go so far as to make that statement, that they always wait; but I will make the statement that I have testimony from a large number of railroad employees, who tell me that the trains wait quite a while in order to get the required tonnage.

The CHAIRMAN. A gentleman who was here the other day in explaining that said that it simply meant a change in the method of computing alone. In olden times they used to haul so many cars, while now it is so many tons. That is the explanation he gave to us. And he said that it did not occasion delay to any extent in the movement of the trains.

Mr. MOORE. Then the testimony of the railroad employees, universally, must be wrong, because railroad employees, brakemen, conductors, and engineers have told me that whereas they could easily

make 15 to 18 miles an hour, that now their average on live-stock trains is not 10.

Mr. TOWNSEND. Do they tell you why?

Mr. MOORE. On account of the difficulty of handling this immense tonnage. It is a very difficult train to handle, such an immense amount of cars as they now carry, not only the loading out, but at terminals and at junctions and at connecting junctions it is so difficult to handle it, and when you have to side track for passenger traffic.

Mr. TOWNSEND. Have you given it sufficient study so that you could suggest a remedy as to how the railroads should proceed in this matter?

Mr. MOORE. I have suggested a remedy, and that is to cut these trains into smaller sections. But that would be one of the details if the bill should become a law that we would want left with the Interstate Commerce Commission.

You are well aware that during the last five years there has been an effort made on the part of the managers of railroads to make one engine perform what two engines performed before, and one crew perform as much labor as two crews performed before. Now I will grant that this will result in economy to the railroads, but that economy is made at the expense of the shipper. Is this justice? Is it right to keep a man waiting for cars anywhere from fifteen days to sixty days, and all the time his property is depreciating in value? Would railroad people submit to have their property in jeopardy, and, in fact, deteriorating, if a remedy could be applied?

My affidavits and my statement will bear that out. Not only one shipper but multiplied numbers of them have waited anywhere from fifteen to sixty days for cars with their property depreciating in value all the time.

Mr. CUSHMAN. Right there. I have been reading recently that there are a great many idle freight cars that companies now have standing on various roads and tracks. What are the companies making now out of their idle equipment?

Mr. MOORE. Oh, sir, now I am not assuming, and I remarked in the early part of my paper that at certain seasons of the year when traffic was heavy—to be sure these arguments do not apply to cars at all times of the year on all railroads.

Mr. CUSHMAN. My understanding of the position advocated by some men—I don't know whether it is your position or not—is that whenever there is a demand for cars the railroad should furnish them, regardless of the cost, and that whenever the cars lie idle, thereby incurring a loss to the companies, there is no reciprocal obligation to the public to furnish business, but it is altogether an obligation on the part of the company to furnish cars.

Mr. MOORE. I told you in the forepart of my remarks that the equipment must be regulated according to the greatest demands of the year. I am not undertaking to supply these cars with business at all time of the year, and on that account I say that the policy pursued by a railroad is economy, but at certain seasons of the year that economy to them is disastrous to the shipper, and hence they must purchase more cars to be able to meet the supply more promptly and to make better time.

Mr. TOWNSEND. That might involve, might it not, an increase of freight charge?

Mr. MOORE. Yes; and I am going to get to that pretty soon. The producer and the shipper of this country do not care; they are not going to quibble about increased freight charges, just so they can get the service; in other words, they would rather have good service than to have a low freight charge.

Mr. CUSHMAN. Now, I beg pardon. I don't wish to interrupt you again, but I am forced to state that that is not correct, because in my country right now the big outcry is against an increased freight charge that has been promulgated recently.

Mr. MOORE. I am only speaking for myself.

Mr. CUSHMAN. But there are plenty of cars.

Mr. MOORE. And I am not speaking for your clients, because I do not know the complexion of them.

Mr. ADAMSON. Is not the question of freight rates a relative matter rather than an absolute matter? The amount of freight you pay is as much as your competitors pay.

Mr. RICHARDSON. But is there not a great outcry against the rates? You know that we have recently had a decision of the Supreme Court of the United States upon the matter of States regulating the rates?

Mr. MOORE. That remark was general, and I am not trying to include anybody excepting myself in that statement.

Mr. RICHARDSON. We want good service and reasonable rates too.

Mr. TOWNSEND. You recognize, Mr. Moore, that Congress could not legislate solely for the cattle growers if it was detrimental to the rest of the shippers of the country, do you not?

Mr. MOORE. No, sir; while it is not my province to include other vocations, yet it is a well-recognized fact that the grain dealers, and in fact the shippers of all commodities, are suffering to a greater or less extent along with the live-stock shippers. On account of the perishable nature of live stock, they would naturally suffer more than a delayed car of grain, but those people are just as insistent that some such provision as this shall be enacted into law, and the power given to the Commission to regulate it, as we are.

Now, I am afraid you gentlemen will cause me to break my word with the Chairman as to the time, and I do not desire to do that.

The average speed made by freight trains to the different markets in the West is unreasonably slow.

Mr. HUBBARD. What is the rate of speed, generally speaking?

Mr. MOORE. Now, so far as I am informed, the rate of speed to the different western markets by live-stock trains is not 10 miles per hour, and in many specific cases it does not exceed 5 or 6.

Mr. HUBBARD. What time is called for by the schedules for those trains?

Mr. MOORE. Oh, well, sir, it is very difficult to get at that. I do not think there is any minimum limit per mile. Of course, there is a schedule generally arranged. Where a train leaves Omaha at a certain time, a schedule calls for an arrival at Chicago at a certain time.

Mr. HUBBARD. What speed would be necessary to make the schedule good?

Mr. MOORE. I think it is 14 or 15 miles per hour—it is very easily determined. The schedule calls, I think, for about twenty-four hours.

The CHAIRMAN. What was it ten years ago?

Mr. MOORE. I have been an active shipper for more than ten years, and I remember very distinctly that we were making anywhere from 15 to 30 miles per hour several years ago.

The CHAIRMAN. You have known of very many instances where cattle trains were run as a section of the faster passenger trains, have you not?

Mr. MOORE. Oh, yes.

The CHAIRMAN. It was a common thing, was it not?

Mr. MOORE. At that time it was; but I am fearful to relate to you the slow rate at which some of them run now, for fear my veracity might be called into question.

The CHAIRMAN. In those days, say ten years ago, when cattle trains were run as sections of fast passenger trains, was there any appreciable injury to the stock?

Mr. MOORE. Oh, no, sir.

The CHAIRMAN. As compared with the slow trains?

Mr. MOORE. No, sir, indeed.

The CHAIRMAN. In your judgment, which method is productive of greater injury, the slow rate of 10 miles or less per hour, or the old faster rates of passenger time?

Mr. MOORE. Unquestionably the slow rates. That does not admit of discussion.

Mr. CUSHMAN. Do I understand you, then, that the situation was better before we commenced to place so much of this power in the hands of the Interstate Commerce Commission than it is now?

Mr. MOORE. I do not attribute it to that cause, not the least in the world. You appreciate very well—you have been a Member of Congress perhaps a long time, and you know that the Hepburn bill related more particularly to the rate question and to questions pertaining to that, allied to that; and it was not contemplated at the time by Mr. Hepburn or those who had the bill in charge that the service entered into it, hence I do not attribute the giving of the rate business into the hands of the Commission as responsible for this deplorable condition of things that I am describing. No, no; I do firmly believe, gentlemen, that the piling up of this wonderful tonnage is responsible largely for the slow rate of speed.

Mr. CUSHMAN. Isn't the real truth about it that the tonnage and the business has outgrown the equipment and capabilities of the railroads?

Mr. MOORE. I have more confidence in your ability to answer that question than I have in mine.

The CHAIRMAN. You have spoken of the deterioration in movement, prompt delivery, and so forth. During this period that this deterioration has been going on, have rates been increasing or diminishing to the shipper?

Mr. MOORE. In the Southwest, I think, perhaps—and that is hearsay—my shippers tell me that they have been much increased. In the country tributary directly to Chicago I think there has not been any particular change in the live-stock rates. Representatives from Omaha and the different western markets can reply in relation to that more particularly.

The CHAIRMAN. Is the rate from Missouri River points to Chicago still 23½ cents?

Mr. MOORE. My information is that it is.

The CHAIRMAN. How long has it been 23½ cents?

Mr. MOORE. I can not tell, but quite a while; a long time; five or six years, perhaps more. The secretary of the Live Stock Exchange says ten years. I have a distinct knowledge of what has been reported to me in the last five or six years, but the secretary says ten years.

It may be urged that this evil will soon pass away, but I will give you some reasons why I think it will not in many parts of the West. As long as this tonnage system is in vogue it makes but little difference if the volume of freight is small, the railroad people will let that freight accumulate until they get a load and then the same slow service will be the lot of the shipper. While it will cost the railroads a little more money, we are demanding that these trains be cut up into smaller sections, and, as a consequence, we will make faster time and get more frequent use of the cars. If it should take three days under the present system to reach a western market, under our proposed system it would take about half the time, and, as a consequence, the shippers of this country would get to use these same stock cars twice as often as they are permitted to use them at the present time. If the rate under the proposed system should be greater, the stock men of this country can afford to pay this rate rather than consume so much time in getting to market with their stock.

We have specific cases without number where the average running time to the different markets from the point where the shipment originated runs as low as 5 or 6 miles per hour. On this subject I do not put all the railroads of this country under the seal of our condemnation, and our plea is that railroads of the West in transporting commodities to the different markets are not making use of the possibilities that are given them.

There may be complaints from competitive points in reference to the supply of cars, but so far as this committee is concerned none has been filed with them. All complaints come from points where there is no railroad competition. Just the reasons that enter into this condition of things are hard to enumerate, but one great reason is that railroads use stock cars for preferred freight; that is, stock cars are used to transport lumber and coke and ore and other commodities, where a delay will probably not open up a case for damage. At least the liability of damage would be considered by the railroad as so remote that the road would run little risk in taking this dead freight. On that account the railroads often prefer to take the dead freight instead of live stock, and, as a consequence, the live-stock man is left on the prairies with his herds and flocks to await the good pleasure of the transportation companies to send him to market when they have little else to do.

Mr. HUBBARD. Are these other commodities more profitable to the railroad in carriage than live stock?

Mr. MOORE. I have assumed that the liability for damage is so remote—

Mr. HUBBARD. Out of which class of commodities does the railroad make the most money, in your judgment?

Mr. MOORE. "Actions speak louder than words," and my witnesses testify that their cattle have remained on the prairie while these stock cars have been employed to take lumber, coke, and coal, and that is the reason that I would assume that they could make

more probably out of it than out of live stock, so I call that preferred freight.

Mr. HUBBARD. Your opinion as to the comparative profits to be made out of it is based entirely on that inference?

Mr. MOORE. Not entirely, because railroad men tell me, in the aggregate, eliminating the subject of damages from their live-stock shipments, that they could make more out of it.

Mr. HUBBARD. Out of what?

Mr. MOORE. Out of dead freight.

Mr. CUSHMAN. For illustration, if you were engaged in the railroad business, and taking one car for an illustration, if a man loaded that car with coal and wanted it transported and another man wanted the same car for the transportation of a load of live stock, if you transported the live stock instead of the coal the man who ordered the car for coal would sue you, and if you transported the coal and did not transport the live stock, then the man who owned the live stock would sue you. Between the two horns of that dilemma, if you were managing the railroad, what would you do?

Mr. MOORE. I would not take either horn of the dilemma, because, according to the proposition laid down, the railroad companies are bound to furnish cars to both.

Mr. CUSHMAN. If they only need them during one month, what would they do with them during the other eleven months?

Mr. MOORE. It is a violent supposition to say that they will need them for only one month, because the facts are that they need them for more than one month.

Mr. CUSHMAN. In view of the fact that the sidetracks of this country are to-day filled with empty cars, where do you get the justification for assuming that it is a "violent supposition?"

Mr. MOORE. The justification is that such panics as we had last fall do not come only every ten or fifteen years, and hence such a condition of things—you can not judge the general situation by the situation at present; that is my answer.

Mr. STEVENS. Nowadays the railroads and the shipping trade require special styles of cars—live-stock cars, horse cars, refrigerator cars, dairy cars, furniture cars, fruit cars, and all that sort of thing—so that one kind of car can not be used for the other traffic, and that kind of car in one trade can only be used for a limited time during the year. Do you contend that a railroad should be required to have all of those kinds of cars available all the time for any purpose that may be necessary?

Mr. MOORE. Your statement is partially true. I want to remind you that live-stock cars are made primarily for live stock, but that at present every kind of commodity does not have to have a special kind of car, because the same car is used for lumber and coke and other commodities. Now, I am not taking the hide-bound position that a railroad shall furnish the kind of car and a sufficient number of cars to accommodate different commodities, because a live-stock car, as I have shown, can be utilized for other purposes. A box car can occasionally be used to carry a crated boar or calf, or something of that kind, and I would not make that hide-bound statement. But that this equipment must be furnished, according to the time stipulated by law, is a proposition that I do not want to get away from, because

those words "reasonable notice" are so indefinite; they are euphonic and catching and sound well, but very indefinite.

Mr. BARTLETT. What would you substitute for the words "reasonable notice?"

Mr. MOORE. Well, now, I have so much more confidence in this committee than I have in myself that I would say that is one of the details that they must arrange; and yet I would rather the specified time should be a long one than not to have any specified time at all.

The CHAIRMAN. Would you say, then, ten days, five days, twenty days—would you prefer that rather than to use the phrase "reasonable notice?"

Mr. MOORE. Yes, sir. I have affidavits from some fifteen men that I would like to put in the record, where men have waited from fifteen to thirty, forty, and even sixty days, and many of them have had to abandon their shipments entirely.

Mr. BARTLETT. I see from one of these affidavits that one waited ninety days.

Mr. MOORE. Yes; and that affidavit is by a gentleman whose reputation could not be assailed here or elsewhere. He is known all over the country, and he is president of the Sheep Growers' Association of Utah. He makes the affidavit before a police magistrate.

Now, then, as I said before, you are removed from these things, and you can not appreciate the difficulties that the stock men of the West have been laboring under.

Mr. ESCH. Mr. Peabody, the chief statistician of the Santa Fe road, was before us this week, and cited this form of abuse, and he used Mr. Mortimer McKenzie as a "horrible example." Do you know him?

Mr. MOORE. I know him; yes.

Mr. ESCH. He read from an order for cars which Mr. McKenzie used during the last shipping season, and he showed that Mr. McKenzie ordered more cars than he used, and I think in one instance absolutely refused the consignment entirely, waiting probably for a more favorable market. What do you know as to the character and extent of such abuse, if abuse it is?

Mr. MOORE. Yes, and I am exceedingly glad that you have sprung that question. Let us make it just as hard on the shipper as on the railroad. In all justice a shipper when he orders cars should put up earnest money as a guaranty that he intends to ship at the stipulated time. This committee would do a wise thing—let us not have this legislation one-sided, and, as I said before, we are not hostile to the railroads; that is an advantage they should have. There should be some good, substantial evidence on the part of the shipper that he intends to ship. I have never heard it, and I suppose Mr. McKenzie is incapable of such a thing, but we regard that as exceedingly wrong, to think that any shipper would give notice of what he intended to ship and then fail to ship. He should be penalized.

The CHAIRMAN. I think Mr. Peabody, or some gentleman, said that the railroads would welcome legislation of this extreme character, provided the shipper was required to put up 25 per cent of the freight charge. Would that be a reasonable stipulation, in your judgment?

Mr. MOORE. Yes, and even 50 per cent. Now, sir, let us not have this legislation one-sided. I would be exceedingly glad to have an

enactment of that kind. There is no use of having a law like a jug handle—on one side. When the shipper assumes the responsibility of ordering a car, he must discharge the obligation and responsibility to the railroad. As an evidence of what he is going to do, he should put up his good money. All live-stock shippers who are clients of mine would not object to that at all. A man ought to fulfill his obligations to the railroad as well as the railroad is supposed to fulfill its obligations to the shipper.

The CHAIRMAN. If you were legislating, would you make the deposit accompany the order for cars?

Mr. MOORE. I certainly would, sir. There is nothing harmful in that. A man who is going to act in good faith and intends to ship does not intend to be influenced by such a thing as the idea that the market is going to turn against him. He ought not to be influenced by that. I would have him deposit the money.

The CHAIRMAN. Would you make that deposit in the nature of a forfeiture?

Mr. MOORE. Sure.

Mr. TOWNSEND. Do you think you speak the sentiment of all the shippers of live stock on that subject?

Mr. MOORE. Perhaps not. As I remarked in the fore part of this paper, if these regulations were made by shippers they would be entirely too drastic and stringent for the railroads.

Under these circumstances can this committee blame the stockman of the West for demanding that the Interstate Commerce Commission shall take an additional oversight in seeing that the stockmen of the West get reasonable service and that this reasonable service shall consist in securing cars on legally stipulated notice and, further, that prompt transportation to the markets shall be given.

From the best data obtainable the average speed of stock trains into the western markets is not 10 miles per hour. Can this be improved upon?

Mr. HUBBARD. How did you arrive at that conclusion?

Mr. MOORE. By the evidence of the railroad men themselves and by the demand for damages, and partly from actual observation. We know the time of starting the train at a remote part of the country, and we know the time of arrival, so it is easy to compute the time that the train has consumed in making the run.

Mr. HUBBARD. That is one thing. Have you extended that method of calculation so as to cover all the trains and, therefore, enable you to speak as to the average speed actually made by all of these trains?

Mr. MOORE. As I said before, in regard to evidence of railroad men who run every day and the evidence of stockmen on trains who run once or twice a week—of course I would not pretend to say that it is absolutely perfect.

As I said before, some of the roads of this country are exempt from the condemnation that we file against most of them, and competition is to be credited as the cause why they are not all to blame. Doud & Kiefer, of Chicago, large exporters and shippers to the eastern markets, make the statement that live-stock trains carrying their cattle from Chicago to eastern points and the seaboard make an average of 15 miles per hour. Egan & Norton, of Chicago, another firm that does a large business between Chicago and eastern points, state that to the best of their ability they can

testify that the average running time from Chicago to eastern towns and cities is $16\frac{1}{2}$ miles per hour. The service east from Chicago and the service from western points to the different western markets may not be on a parity.

It may be urged that the trains from Chicago east are made up as solid trains at Chicago and that they have no "pickups" on the way east. I will only say that the trains made up at Omaha, St. Louis, Kansas City, St. Joe, and Sioux City are solid trains and make but very little better showing than the trains that pick up stock at the way stations.

There is too great a difference in railroads making from $5\frac{1}{2}$ to 10 miles per hour and other roads performing a similar service making from 15 to $16\frac{1}{2}$ miles per hour. Now, there is no effort on the part of this committee to enact such drastic legislation that it would result in hardship to the railroads. We feel that we can not do without railroads, but neither can railroads do without us. We furnish the business and in return we want reasonable service, but reasonable service in reference to the time taken by a railroad to furnish the equipment, and the time made in transportation is so indefinite that we want a specific declaration in reference to the notice that shall be given a railroad in regard to furnishing cars, and we want also to incorporate as law, or let the Interstate Commerce Commission decide, whereby a good speed shall be maintained.

The evils practiced by the railroads have become a grievous burden to the shipper and producer and it is impossible to silence the complaints. Under such a condition of affairs we feel that this committee will not deny the large number of shippers and producers of the West the relief they seek.

Now, gentlemen, I thank you for being so indulgent. I have exceeded my time. But remember the two propositions, that we would like to have the benefit of the supply of cars and the service after the equipment has been supplied.

Mr. C. W. BAKER, of Chicago. Mr. Chairman, I just want to say that the representatives of the Live Stock Exchange are at the service of this committee either this afternoon or at any other time that will suit their pleasure.

I will introduce Mr. McPherson, the president of the National Live Stock Exchange, and a resident of Omaha. Before he proceeds I would like to ask one or two questions to bring out an authoritative answer to one question asked by the chairman of the committee, and that was the condition as to the time consumed some two or three years ago.

The CHAIRMAN. Very well.

STATEMENT OF MR. THOMAS B. McPHERSON, PRESIDENT OF THE NATIONAL LIVE STOCK EXCHANGE, OF OMAHA, NEBR.

Mr. BAKER. You live in Omaha and are familiar with the time of shipping from Omaha to Chicago, are you not?

Mr. McPHERSON. Yes.

Mr. BAKER. The distance, in round numbers, is about 500 miles, is it not?

Mr. McPHERSON. Yes, sir.

Mr. BAKER. What was the schedule time between Omaha and Chicago a number of years ago—the chairman, as you will remember, asked what the schedule time was?

Mr. MCPHERSON. The present schedule is from twenty-four to thirty hours. Ten years ago it was from eighteen to twenty-four hours. The freight trains are not run upon the same schedules, as some are called local trains, which stop in transit picking up other shipments, but the best time of the freight trains is twenty-four hours from Omaha to Chicago.

Mr. BAKER. Do they perform schedule service?

Mr. MCPHERSON. They do not, as a rule.

Mr. Chairman and gentlemen of the committee, I shall take up but a very few minutes of time. I feel that the presentation of our case by Mr. Moore has been so able that it will be a repetition for me to go over the points that he has discussed.

There have been some questions proposed in the minds of the committee as to whether or not the entire live-stock interests of the country is specially interested in this measure before you. The National Live Stock Exchange, through the courtesy of the chairman of this committee, has sent here its president and secretary to bespeak for the shippers and stock growers of the country some remedy at the hands of this Congress of the abuses under which we are suffering. The proof of these abuses must be patent to every member of this committee. It lays before you in the shape of affidavits, it has come before you in the shape of statements made from almost every quarter of the western country, and the reason for these complaints arises, if I may use the term, from a mania which I will designate "terrible tonnage."

Prior to the adoption of this mania by the railroad magnate and his managers it was possible to secure upon a consignment of 20 carloads of live stock what was called a special train, run upon a special schedule, which was passenger time, that schedule covering in mountainous districts 20 miles per hour upon the average, and across the plains 35 to 40 miles per hour, and landing our live stock at the market destination in such a condition as to secure the minimum of shrinkage and the minimum of destruction of property in the matter of bruises and cripples. The present system compels us to place our live stock upon long freight trains, on which there may be 65 carloads or more of dead freight, the enormous weight of the dead freight being such that every time the train stops or attempts to stop the concussion and jar is such as to almost throw the live stock from their feet; and while a maximum speed of less than 10 miles an hour is maintained, as has been shown to your committee, that is not the worst feature of the case. The worst feature of the case is the bruising and the maiming of the cattle, so that when they arrive at market they are not in a marketable condition.

The matter of rates has been referred to here, and I want to say to you gentlemen that it is not for the live-stock shippers so much to question the rates as it is the service. When we order cars from a definite shipping point for our cattle, and are told that we can bring them to that shipping point at a specified time, and arrange to do so, many of our cattle being perhaps 50 miles or more from that railroad station, and we drive the cattle to the station, and upon arrival there

we find that there are no cars, and hold them at a tremendous expense, the shrinkage is very great, and shrinkage is the bane of every cattleman's existence. The moment you start a steer from his home, whether in the feed lot in Nebraska, Iowa, Illinois, or any locality, or from the range, that moment the steer begins to shrink, and the shrinking increases with the increase of time required to transport that animal to market; and the value of the animal decreases in accordance with the manner in which he is handled in transit.

There are therefore two points in this case which are absolutely essential to the welfare of the cattle industry of this country, and this live-stock exchange, of which I have the honor to be president, and the South Omaha Live Stock Exchange, of which I have the honor to be president, is here to say to this committee that unless we can get some remedy—if the present bill does not cover the case—then, in your wisdom, give us something that does. We feel that when you know the situation as we know it, when you know that this great live-stock industry is being depressed and the value of property depreciated and our profits taken away from us and turned into losses by reason of the failure of the railroads companies to give us the facilities to get our stuff to the market—when you know that, it does seem to me that the power is within the hands of the lawmakers to whom we come suppliant, and ask you to protect this industry.

Mr. BARTLETT. Who bears the loss of shrinkage?

Mr. McPHERSON. The owner of the stock.

Mr. BARTLETT. The man who sells them?

Mr. McPHERSON. The man who owns them, the man who raises and fattens them, the man who ships them to market.

Mr. CUSHMAN. Is it your judgment that this sad situation you describe is due to carelessness or inattention on the part of the railroad companies?

Mr. McPHERSON. The "terrible tonnage," as I said before. The railroad magnate can not see anything but tonnage. He sleeps on it, eats on it, and dreams of it, and he forces us to pay the penalty. That is the fact as it is. As has been explained, prior to this mania our cattle were carried upon special trains upon special times, delivered to the market within a reasonable time, and we could count, in every instance with few exceptions, upon securing equipment at that time.

Mr. CUSHMAN. Isn't it also true that the tremendous increase in business, the tremendous increase in tonnage, has forced the railroad managers to adopt this tonnage system in order to make the limited equipment they have perform the work?

Mr. McPHERSON. Granting that statement, we ask that the railroad companies, who are receiving benefits from us, certainly commensurate with the requests we make—we ask that they be required by law to furnish us—

Mr. ADAMSON. It is not always necessary to mix up brick and lumber and live stock in trains?

Mr. McPHERSON. Absolutely unnecessary, and the mixing up of commodities is such a detriment to the live-stock interest that our property is being damaged thereby.

Now, gentlemen, it is not only the West which has an interest in this proposition. Every item of cost or loss that you add to the producer will come eventually out of the consumer, because it raises

and increases the value of the product that he is obliged to buy. The East is just as much interested in this proposition as the West. We do not want you to think that it is class legislation, for it covers the entire country, and it is the entire country that is asking for it. I feel that in your wisdom the committee will be able, if the provisions of the present bill are not satisfactory, to produce a bill that will be satisfactory and will be capable of accomplishing the proper ends without injury to any other commercial interest.

The CHAIRMAN. In regard to the matter of shrinkage, is it not true that shrinkage has an effect upon prices?

Mr. MCPHERSON. Yes, sir.

The CHAIRMAN. For instance, take two steers of equal value in other respects: One goes into the market after two days on the cars, and has suffered a large loss from shrinkage. The other goes into the market after two hours in transit. Does not the buyer take into consideration the fact that the one has shrunk—that is, that the contents of the bowels and stomach have disappeared in one case, while in the other case the stomach and bowels are full, and does not that affect the price?

Mr. MCPHERSON. Absolutely, sir.

The CHAIRMAN. Do you not get a better price relatively for the steer that has shrunk than for the one that has not?

Mr. MCPHERSON. No doubt of it in the world. The facts are, upon shipments made in the last year under the present tonnage system, the owner of the cattle, following those cattle to market, if there had not been a designated brand on them, would not know them at their destination because they had fallen away so and had become what we call feeders or canners.

The CHAIRMAN. How long does this shrinking process go on before the solids are affected—that is, before the gut fat is consumed?

Mr. MCPHERSON. About twenty-four hours, I should say.

The CHAIRMAN. Up to that time the shrunken steer, pound for pound, is worth more than the steer that is not shrunken?

Mr. MCPHERSON. Undoubtedly. That is what I intended to say.

Mr. WANGER. As to that twenty-four hours, the further shrinking deteriorates the cattle—

Mr. MCPHERSON. The longer the period between the loading and the marketing, the greater the shrinkage, and the more the shrinkage the greater the animal depreciates.

The CHAIRMAN. If that is strictly correct, isn't it true that the animal will shrink during the first twenty-four hours very much more than he will in the second twenty-four hours?

Mr. MCPHERSON. The fluids pass from him in the first twenty-four hours, and those are replaced at the market point by watering, and the process which he goes through before being sold.

The CHAIRMAN. A steer that has been confined forty-eight hours in the cars, and is dumped down in the muddy pens, does not eat anything and does not drink anything?

Mr. MCPHERSON. No; and we lose the entire shrinkage.

Mr. KENNEDY. In the shipping of live stock would it be practical to provide that trains carrying live stock should not carry any heavy freight?

Mr. MCPHERSON. I should think so, and that would certainly be a great remedy.

Mr. TOWNSEND. Would not that be injurious to the man who had a single car of stock?

Mr. MCPHERSON. No; it would be added to the cattle train as it goes through.

Mr. TOWNSEND. But there are not always enough cars for the cattle train when he gets ready to ship.

Mr. MCPHERSON. He would have to wait until he could get a car, and it would be picked up by the next cattle train. The man who only has an individual car of steers is the man in the farming districts adjacent to the railroad, and in the event that he can not make a shipment to-day, he can make it to-morrow, so that he is not in the same relative position as the man on the range with a large herd and is 50 to 100 miles away from the station, and who is compelled to take those cattle from their home and drive them to reach the train.

Mr. KENNEDY. Might not some regulations tend to correct these abuses, some sort of a provision that the trains should run on a schedule of their own, and faster?

Mr. MCPHERSON. That is entirely possible, and would work no hardship on anybody. The little fellow could combine with his neighbor and make up a train just as he used to do prior to the present condition.

(Adjourned at 12 o'clock to meet again at 1.30 p. m).

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Friday, March 27, 1908.

The committee met at 1.30 o'clock p. m., Hon. William P. Hepburn (chairman) presiding.

STATEMENT OF MR. J. W. MOORE, OF CHICAGO, ILL.—Continued.

The CHAIRMAN. You are a member of the Stock Exchange of Chicago?

Mr. MOORE. I am a member of the Live Stock Exchange.

The CHAIRMAN. How large an organization is that?

Mr. MOORE. The secretary of that exchange is here and he can give you the figures.

Mr. BAKER. In round numbers it is 700.

The CHAIRMAN. They are commission men?

Mr. MOORE. Mostly; some of them are buyers.

The CHAIRMAN. What proportion of them are buyers?

Mr. MOORE. I will call on the secretary to give that information. The chairman asks what proportion of the Chicago Live Stock Exchange would be buyers.

Mr. BAKER. Twenty per cent.

The CHAIRMAN. How are prices for live stock fixed in your State?

Mr. MOORE. Mr. Chairman, in one sense the prices are not fixed. That is, there is no prearranged agreement on the part of the commission men or the buyers, either, so far as I know. I would say in answer to the question that prices are made simply by competition.

The CHAIRMAN. By competition?

Mr. MOORE. Yes, sir.

The CHAIRMAN. Is there not an almost invariable and absolute uniformity of price?

Mr. MOORE. Well, now——

The CHAIRMAN. Take, for instance, the highest grade of shipping steers; there is a uniform price that is offered by every man at every hour of the day on a given day, is there not?

Mr. MOORE. No, sir; there is not any uniformity.

The CHAIRMAN. Is there any competition in the sense of one man raising the bid of another man?

Mr. MOORE. Oh, yes, sir; not only by a small sum, but by a large sum; and if you want me to illustrate I will take a sale that I made there on last Wednesday of a load of stock that was considered prime, and I was bid 6.75 and 6.80 by a number of buyers, and I finally found a man who gave me 7 cents a pound for that particular load of stock.

The CHAIRMAN. And the others offered you the same price?

Mr. MOORE. No, sir; they offered me 6.75 and 6.80. I found but one man who was willing to give me 7 cents a pound.

The CHAIRMAN. Do you buy?

Mr. MOORE. No; I sell.

The CHAIRMAN. What fixes in your mind in the early hours of the market on a given day the price you shall ask for those steers?

Mr. MOORE. That is somewhat difficult to explain to a man who has had no experience; but I think I can explain it to you, Mr. Chairman. I institute a comparison in my mind as to what the value would have been, say, the day before, and then I take into consideration the receipts, the probable supplies, and I take into consideration the demand that I may know of, that exists.

The CHAIRMAN. What hour of the day does the market open?

Mr. MOORE. Our cattle market opens at 8 o'clock.

The CHAIRMAN. Have you at that time a knowledge of the receipts of cattle that will enter into the market that day?

Mr. MOORE. Yes, sir; not only at Chicago, but at all other markets.

The CHAIRMAN. Then cattle that arrive at a later hour than 8 o'clock in the morning do not enter into the market that day?

Mr. MOORE. Oh, yes, sir; they enter into the market. We have a closing, which is 3 o'clock; but I want to explain to you, if you will permit me, why the early market hours are better than the hours later in the day. The eastern buyers, of whom we have a large number there, are anxious to secure their cattle as early in the day as possible in order that they may be shipped out the same day. Some of the trains eastbound leave at 2 o'clock and others at 4 and others at 6, and on account of their disposition to get these cattle as early as they can, because they have prepared for that shipment, they are active competitors with the packers and with one another early in the day; but once their supplies are secured and they are practically out of the market, then it becomes a one or two man market, and the prices somewhat later in the day are often not so good as the prices secured earlier in the day.

The CHAIRMAN. What classes of cattle do the eastern buyers buy?

Mr. MOORE. Mainly good cattle, but here of late years there has quite a demand sprung up for the inferior grades. Pittsburg and Cleveland, Ohio, and even some New York buyers have been buying an inferior grade of cattle. But the eastern demands mainly call for good cattle.

The CHAIRMAN. Is it not true that in the mutual altercation between buyer and seller the subject of controversy is the grade rather than the price?

Mr. MOORE. They both enter into the trade.

The CHAIRMAN. On this hypothesis, that grades are fixed and prices are fixed?

Mr. MOORE. Oh, sir, the prices are not fixed, not as you would go and mark up on a blackboard the price of wheat or corn. There is quite a diversity of opinion as to the grade of cattle, and also as to the price. The prices are not fixed.

The CHAIRMAN. They are not fixed in the sense of a ukase fixing them, but is there not a general, common understanding among all of the buyers as to the prices that for a given day are to be paid for the respective grades of cattle?

Mr. MOORE. Mr. Chairman, as I understand it, I would say no, unequivocally, because the prices vary so much. There may be a variation of 25 or 50 cents a hundred from 8 o'clock in the morning until 3 in the afternoon.

The CHAIRMAN. Are those increases in price fixed by the later information that comes into the market during that day?

Mr. MOORE. Yes and no. The prices are fixed from this consideration, that the receipts will not prove to fill as we want them. For instance, the estimate early is 25,000, and later we find that the receipts do not fill, and receipts are cut down to 20,000. That would be an important factor in determining the market. That would be a factor. Then the one that would have the most effect would be additional orders coming in from the eastern cities and towns that the buyers probably do not know of early in the morning. For instance, if a buyer from New York or Pittsburg would go out with an order of eight or ten loads, and before noon he should get a wire from the eastern cities that they wanted the order doubled, for instance, that would make him an active competitor, and would change his estimate on a certain grade of cattle. Whereas early in the morning he would only bid 5 cents per pound, if he went out later in the day with this order and found that this particular grade was scarce, he might raise his early price a quarter of a dollar a hundred. Have I made it clear?

The CHAIRMAN. These eastern shippers or buyers buy for export, usually?

Mr. MOORE. Not for export exclusively. There are large houses to be supplied. We have two buyers on our market there who buy for Washington, here. Others buy for Cleveland and some for Pittsburg.

The CHAIRMAN. Do you understand there is any buying of live stock for the Washington market?

Mr. MOORE. Oh, yes, sir; Eagan & Norton buy there every week for some abbatoir down here; I do not know who these people are. My documentary evidence will show that.

The CHAIRMAN. What class of cattle command the highest prices; cattle for export?

Mr. MOORE. No, sir; there is a grade of cattle that are shipped to Boston and New York that command the highest price.

The CHAIRMAN. Cattle shipped to Boston and New York are largely export cattle?

Mr. MOORE. I do not know of any exporters that are shipping from Boston, but there may be.

The CHAIRMAN. What Atlantic port ships the larger number of export cattle?

Mr. MOORE. I would say New York. But I have not statistics to back that up. Dowd & Kiefer, of our city, while they ship some by the Canadian routes, yet tell me their shipments are mostly from New York.

The CHAIRMAN. Much the largest portion of the export cattle go from ports of the United States, do they not?

Mr. MOORE. I think so.

The CHAIRMAN. And it is only comparatively the few that go through any foreign port?

Mr. MOORE. I think that is true.

The CHAIRMAN. These cattle for the eastern markets are those that are active in the early part of the day; that is, they are those which are actively in the market in the early part of the day?

Mr. MOORE. Yes, sir. I would say that the market would average highest while the buyers for eastern markets are competitors.

The CHAIRMAN. And that eastern market is set aside about what hour of the day?

Mr. MOORE. They usually close about 12 o'clock, unless they anticipate a short run the next day, in which case they will probably keep on buying and hold the cattle over until the next day. If their idea is that the receipts will be shorter next day and they can get a supply of cattle for two days they will keep on buying up to 12 o'clock, and the cattle bought in the early part of the day are shipped out the same day, and those bought in the later part of the day are probably held until the next day.

The CHAIRMAN. Then, after they have supplied their demands, the market begins to recede?

Mr. MOORE. Oh, yes; it becomes a slow market, as a rule, unless conditions are such as I have described a while ago.

The CHAIRMAN. After the eastern shippers are supplied, who buys after that?

Mr. MOORE. Our local packers.

The CHAIRMAN. Your local packers?

Mr. MOORE. Yes, sir.

The CHAIRMAN. What do you know about the uniformity of the prices that they pay?

Mr. MOORE. I will state this to you, that they buy the cattle just as cheaply as possible; but as to any uniformity, as to any agreement being made that certain classes of cattle shall only command a certain price, I am in ignorance with reference to that. If there be an arrangement on their part of that kind, I do not know of it.

The CHAIRMAN. I am not asking about arrangements that are the result of verbal agreements, but I am speaking of an understanding. Is there active competition?

Mr. MOORE. Oh, I think so.

The CHAIRMAN. Among the local buyers?

Mr. MOORE. Yes, sir.

The CHAIRMAN. Do you believe there is?

Mr. MOORE. No, I do not; and I would like to assign a reason, if you will permit me.

The CHAIRMAN. Surely, surely.

Mr. MOORE. And that is that any arrangement, even if there should be an arrangement, would be impossible of execution from the fact that we all know that great minds differ, and the judgments of these buyers differ so greatly that there could not possibly be any arrangement.

The CHAIRMAN. That would be a disagreement in regard to grade and quality?

Mr. MOORE. Yes.

The CHAIRMAN. And not with regard to price?

Mr. MOORE. The price is determined largely by the grade.

The CHAIRMAN. But where there are two bunches of cattle of similar grade is there anything like active competition?

Mr. MOORE. I think so.

The CHAIRMAN. On the price?

Mr. MOORE. I think so; and let me assign a reason. The price varies between the buyers for the packers anywhere from 5 cents to 35 cents a hundred, and it is a daily occurrence.

The CHAIRMAN. A daily occurrence?

Mr. MOORE. Yes.

The CHAIRMAN. On precisely the same grade of cattle?

Mr. MOORE. Not only the same grade, but on the same identical load of cattle.

The CHAIRMAN. On the same identical load of cattle?

Mr. MOORE. Yes.

The CHAIRMAN. Then you know of instances in which there is activity and competition shown by raising bids one over the other?

Mr. MOORE. I experience it almost daily.

The CHAIRMAN. That is all.

Mr. STEVENS. I would like to have this made clear. As I understand, you suggested two things to be done—first, to supply the cars within a reasonable time or within the time fixed, and, second, to move them promptly.

Mr. MOORE. Yes.

Mr. STEVENS. Those are two things.

Mr. MOORE. You understood me correctly.

Mr. STEVENS. As I understood it. Now, as to the supply of cars, you stated that you were also willing that the penalties should be reciprocal; that is to say, that the obligations should be reciprocal; that is, the person who asked for the cars should be obliged to take them and pay for them within certain limits, and if the railroad did not supply them they should be penalized within certain limits.

Mr. MOORE. Yes.

Mr. STEVENS. You and Mr. McPherson also asked that the tonnage system be changed. Do you consider that the rates that you pay now or have been paying, in view of the change of conditions as to wages and cost of supplies and things like that, would warrant you in having those things to be done that you ask without any change of rates or a considerable change of rates?

Mr. MOORE. Well, sir, on the face of that proposition I would have to answer you that, whether the rate be changed or not, their probable profits would not be so great if they ran these trains in smaller sections.

Mr. STEVENS. You would not care for any law that required stock trains to be run solid? There are cases where there would have to be mixed trains, I presume.

Mr. MOORE. Oh, yes, sir; necessarily there would be mixed trains up to a certain point. They might be run as mixed trains to some junction point and there merged with a stock train. It would be impossible to run all trains solid. We do not require impossibilities at all from a railroad, and it is impossible to have exclusive stock trains on these short branches.

Mr. STEVENS. Do you desire any preference above other traffic? That is to say, stock is a very perishable commodity, and deteriorates faster, and all that. In view of that, do you demand by law a preference as against other traffic such as the dead traffic that you spoke of?

Mr. MOORE. Oh, no, sir. I am not demanding. I am perfectly willing to have a law enacted that will give the Interstate Commerce Commission the supervision of such details as that and to have an arrangement made whereby persons shipping all kinds of commodities shall know within a reasonable time what kind of speed they are going to make. For instance, take a train out of Omaha to Chicago; it looks reasonable to us that a schedule should be made that they would be able to live up to and run their trains on; but we do not want to have any preference over other commodities.

Mr. STEVENS. You demand that through traffic should have a preference over local traffic? Supposing that the Chicago Northwestern road, for example, running from Omaha to Chicago, should claim that if they ran through trains on the time that you stated, it would materially interfere with their local passenger and freight traffic, and that they could not do both with the track that they have; would you have us give the Commission authority to require that those through trains from Omaha should have the preference over the local traffic from Iowa and Illinois?

Mr. MOORE. I had not thought of them. I do not see why they should be entitled to preference.

Mr. STEVENS. You do not think there ought to be any preference?

Mr. MOORE. It does not occur to me that there should be; and once there is a regulation making a specific limit, a limit of how they should run, then it will be to nobody's interest to have a preference.

Mr. STEVENS. Some of the railroad witnesses who were here the other day told us that these railroads have regulations in the furnishing of cars, and that they do distribute their forces the best they can, and fairly, and they give each shipper his proportion, and get the cars to him in the best way they can and as quickly as they can. Could the Interstate Commerce Commission make any different regulation from that?

Mr. MOORE. Yes, sir.

Mr. STEVENS. In what way?

Mr. MOORE. Without any reflections on the railroads, the Interstate Commerce Commission could test the truthfulness of the statement you have just uttered as coming from the railroads. It is one thing to have perfect freedom in going as slow as you please, and it is another proposition entirely to have to run their trains at a minimum speed limit, and I have often remarked that necessity is the mother of invention, and when they are required by law to make this minimum speed limit the railroads will find the way to do it. As proof of that,

I have shown, I think conclusively—it is conclusive to me, at least—that what is being done and has been done can be done by other roads, and the traffic service out of Chicago to eastern points is so incomparably better than the service into Chicago that it begins to look to us as though the conditions might be improved by the western roads into Chicago and the other western markets.

In reference to the supply of cars, I have not a lingering doubt in my mind but what at competitive points the cars are supplied. If it were not so, I think in all the damage suits and the claims for damages that we find piled up in the different houses at the different markets there would be some complaints from a competitive point. And I am not saying that there are none. But so far as my experience goes the complaints as to the supply of cars are from points that are not competitive, and the testimony of several of the complainants here is that while they have been herding their flocks and herds on the prairies there, they have seen not only 1, 2, 3, 4, or 5 cars, but as high as 10 or 20 cars—live-stock cars—pass them loaded with other commodities.

Mr. STEVENS. Now, undoubtedly that is true. What should you say to a proposition, then, like this? A large manufacturing plant or a community needs coal for its daily operations, and they demand that coal just as strongly as you demand your transportation. If those stock cars are not loaded with coal, but run through without a load, you get your transportation, and the town or the plant shuts down. If these stock cars are loaded with coal you lose your transportation. The facilities of the road are such, with but single track, short sidings, lack of cars, and one thing or another, that they can not do both. How would you remedy that?

Mr. MOORE. On that assumption I would say there would be no remedy. On that assumption and that presentation of the subject I would say there would be no remedy. But once this is given the dignity of law, and the companies are compelled to furnish cars, they will find the way to do it; and they have assumed that obligation.

Mr. STEVENS. Yes; they are common carriers and assume to do the best they can. Now, you take a railroad such as the Frisco road, which was represented here the other day. They do considerable cattle business, and a large fruit business, and some coal and some lumber business, so that they have to have quite a number of different kinds of cars. They do not move a great many strawberries, as I recall it. The strawberry season is about three weeks in Missouri and Arkansas. If they furnish enough strawberry cars or can get enough strawberry cars, it may diminish their financial capacity to furnish cars in another line. Is it not probably true that a road like the Frisco road, or many of those roads in the West, has not financial ability enough to furnish all the special cars of the kinds that are necessary for the maximum supply that is needed throughout the year? Those strawberry cars could only be used a few months in the year.

Mr. MOORE. It is hard for me to place any limit on the ability of the railroad to furnish any certain number of cars. But do you not see that when they transport a part of these strawberries they are discriminating against the remainder of these owners that do not get a chance to go to town to get the strawberries?

Mr. STEVENS. That is true; but in what way can the law require the railroads to furnish money to buy this equipment, to make the trackage, and to make the terminals? In what way can we do it?

Mr. MOORE. That hypothetical question of yours would indicate a condition of things that I deny. I think the Senate hearings would justify me in saying that the number of engines and the number of cars has perhaps grown just as fast as or faster than the commerce of the country.

Mr. STEVENS. It may not be altogether the number of engines and cars; it may be the condition of the track, and especially the condition of the terminals. Now, the terminals are congested. Supposing they have the number of cars, but the terminals are not sufficient, and the construction of terminals in the cities will require the expenditure of vast sums of money. In what way can we require the railroads to furnish those facilities? And that is one of the things required by the Smith-Culberson bill; they lay down four propositions as to the duty of the carriers, and one of them is to furnish these terminals. How can we compel them to furnish terminals, supposing they do not do it voluntarily? What would you provide as a penalty? Suppose the Frisco road says, "We have got cars enough, and we have got equipment enough, but we can not get terminals in Kansas City and St. Louis; we have not the money to get them," and if we penalize them as we would under this bill it drives them into a receivership; what have you to suggest as a way in which we could compel the Frisco road to do its work?

Mr. MOORE. Of course, if I grant all these premises the conclusion would be inevitable. If I grant that they have not the money to purchase this equipment, and if they did it would drive them into a receivership, if I grant all that you presume, there is no dodging the conclusion; but the presumption on my part and the presumption on those who have had experience with railroads is that their finances and their resources are not easily exhausted, and undoubtedly when they pushed their railroad through a given territory they did assume obligations to the people to carry the traffic.

Mr. STEVENS. Did they assume an obligation to take all the business that the country affords at the time that the people wanted it should be moved? Was that the obligation that they assumed?

Mr. MOORE. Then what did they assume?

Mr. STEVENS. That is what I am asking you.

Mr. MOORE. The theory heretofore is that they shall do all these things in a reasonable manner. That word "reasonable" here of late has failed to have very much meaning, because it is so indefinite; it is capable of so many constructions that it has lost its meaning, and we just want a simple definition of what "reasonable" is in reference to the time—

Mr. STEVENS. That is what I want to get at. Supposing we fix a time, and the railroads can not comply, as many of them can not? I presume that situation is true. Now, what are you going to do about it?

Mr. MOORE. I would just say that in the prosecution of a suit for damages those extenuating circumstances surely would be taken into consideration. We are not here to require impossibilities; we are simply wanting the railroads to live up to the possibilities that are open to them. For instance, take this matter of preferred freight;

have that eliminated. Also the piracy of cars. While we do not want any legislation on that particular point, yet let that be in the hands of the Commission to consider that. While the piracy of cars is something that is foreign to any demand that we might make here, yet it is an evil that has grown up between the roads, and once these reasonable requirements are made of them, they will provide against that evil. It is a matter of common comment that when a car gets away from a company it takes it a long time to get back. Once they are required to furnish this equipment promptly, there will probably be an arrangement between the roads themselves as to the return of these cars.

Mr. STEVENS. You think that is better than a compulsory exchange?

Mr. MOORE. Oh, now, I would a whole lot rather trust the wisdom of this committee to work out such details than to make any suggestions myself.

Mr. STEVENS. I just called your attention to the fact that the Smith-Culberson bill provides five different separate obligations of the railroad companies. First, to furnish sufficient facilities and appliances; second, to furnish transportation as defined in the Hepburn bill; third, to furnish stations and suitable cars and equipment; fourth, to furnish exchanges, and, fifth, to receive exchanges of cars. The only proviso excusing them is this, that whenever, by reason of an accidental or unavoidable cause which can not reasonably be provided against by the use of reasonable foresight and diligence, a railroad fails to do it, and does it as soon as it can afterwards, then the penalty shall not apply. That is the only excuse that the railroad can offer as a defense for not fully complying with those obligations. Would a lack of financial ability to furnish cars be included as one of those causes? In other words, would not this bill drive some of the railroads into a receivership necessarily?

Mr. MOORE. I would say if that claim were made in court repeatedly, and the penalty was enforced, it would seem to have that effect.

Mr. STEVENS. I think we all sympathize with the necessities of of the people in the West. I do not think they have been treated fairly. But if we passed this bill as those people ask us to, with those five obligations, and with no wider defenses against them, it seems to me that it necessarily drives a good many weaker concerns to the wall right now.

Mr. MOORE. You are alluding to one phase of the subject that we from Chicago have not included in our discussions.

Mr. STEVENS. Ought you not to include it?

Mr. MOORE. I emphasized the fact this morning that we are not insistent on any particular form of bill, and I see what you are alluding to, and that is to the exchange of cars. I want to be frank and candid with this committee and say to you that personally I do not know what views these other gentlemen entertain, but I regard that as a kind of academic question which is perhaps beyond our solution, and I think that an enactment could take place at the hands of Congress that would perhaps eliminate that; or I will go so far as to say that I would not jeopardize a bill by a handicap if it is considered as a handicap.

Mr. ADAMSON. If a railroad, considered as a public instrumentality, does not serve its purposes and accommodate the people, what business has it got out of the hands of a receiver? Are not you and the people tributary to it just as well off if it does go into the hands of a receiver?

Mr. MOORE. That is a query which I have tried to answer in two or three ways.

Mr. ADAMSON. I have known of two or three cases of railroads where the country was a great deal better off when the roads were in the hands of receivers. But what is the fact? Does each railroad penetrating a particular territory canvass in a way that territory and know just about what cattle will be moved and when it will be necessary to move them?

Mr. MOORE. So far as I know, a large part of this territory is canvassed by just such solicitors as you speak of.

Mr. ADAMSON. Then they have a pretty accurate idea what quantities of cattle are to be shipped and when they will have to be moved?

Mr. MOORE. Yes, sir.

Mr. ADAMSON. Then it would be possible for most of them to supply reasonably the demand for cars without danger of a receivership, if they tried as hard to argue themselves into it as they do to argue themselves out of it?

Mr. MOORE. Most assuredly.

Mr. STEVENS. You ask two things, first a suitable car supply, and, second, changing the tonnage system and moving freight in a different way, in a more expensive way than the way that is in vogue now?

Mr. MOORE. I think you have misapprehended my position in regard to the tonnage system. I simply have had some talk about the tonnage system to account for the delays that occur. I am not here to advocate the abolition of that. That is one of the things that I would not take from the railroads. In the adjustment of all these matters I suggested that as a remedy in the final adjustment of matters, and arriving at a state of things that will permit them to make a faster speed limit than they now make, that may be one of the elements, but I am not insisting on that being incorporated as a law.

Mr. STEVENS. No.

Mr. MOORE. I just suggested it as one of the means of correcting the evil.

Mr. STEVENS. The point I want to get at is this. You ask for things that probably ought to be done, in a way, but to do them it will cost considerably more money, will cost the railroads more, will make it necessary for them to furnish more cars, to have more on hand that they do not use, and which will make it cost more to move the freight, if the way in which they move it now is the most economical method, and I assume that they try to do it in the most economical method. Now, if the thing that you ask will cost more, and either increase their expenses or reduce their revenues, I want to call your attention to the condition of things before this committee. We have had hearings on twenty-two bills affecting passenger rates, either increasing their burdens or decreasing their revenues. We have had hearings on eleven bills on freight rates, either decreasing their revenues or increasing their burdens. There are seven bills in all with reference to car shortage and car supply. You see we are

confronted with the proposition of a larger demand for decreasing the revenues of the railroads and decreasing the burdens of the people than we are for increasing its facilities. That is our record, and we are here to serve the people.

Mr. MOORE. On that rate proposition I have some views, but they are probably entertained by members of this committee and others. The rate question is a very difficult one to arrive at any just conclusion on at the present time. A reasonable rate, or any kind of a rate, has no meaning to me whatever until you furnish me a basis.

Mr. ADAMSON. Compare it with some rate?

Mr. MOORE. Yes. Until you furnish me a basis from which I can make a reasonable conclusion, it has no meaning. That basis is one that you are so familiar with, and which you have read so often here, that I will not dwell on it.

The CHAIRMAN. On the subject of rates generally what is your opinion? Are they or are they not reasonable?

Mr. MOORE. I have not an idea on earth, Mr. Chairman.

The CHAIRMAN. You occupy such a position, between the shipper and the consumer, that you do not very much care; in your business it does not matter?

Mr. MOORE. I am both a producer and a commission man, and I have a deep interest in the rate question, not only in the passenger rate, but also in the freight rate; and yet when you talk to me about a reasonable rate it has no meaning on earth to me until you furnish me a basis from which I can deduce a conclusion, and that basis is the value of railroad property plus their current expenses. That is academic and is foreign to this, and I do not want to inflict any theories on you. I beg your pardon for that.

Mr. ESCH. In that connection—you may answer or not, as you see fit—would you favor a physical valuation of roads in order to get your unit, your standard?

Mr. MOORE. I will make a reply by asking you another question. Is that physical valuation an impossibility?

Mr. ESCH. The States of Wisconsin, Michigan, and Texas each have physical valuations.

Mr. MOORE. We, as reasonable producers, want these railroads to flourish. No other agencies have developed the commerce of this country as railroads have, and I want them remunerated. But I do not want the legislation and privileges that they enjoy to absorb all the profits, to the exclusion of the prosperity of the producer. I want them to be amply rewarded for everything they do, but when they inflict unreasonable hardships on us, naturally we object. For instance, men out on the plains there have been forced to abandon the shipment of their stock to market; and we have the divine spectacle presented to us every day of the same cars that we need, these cars that were undoubtedly constructed and intended for our use, diverted from the purpose for which they were constructed and used in another channel, loaded with something else, which may be necessary for some other department of commerce; I am not denying that; and then we begin to think it is time to come down here and have a friendly chat with you folks in reference to some remedy.

The CHAIRMAN. You speak of this diversion; you have referred to that a number of times.

Mr. MOORE. Yes, sir.

The CHAIRMAN. And I think you once said something about men seeing cars such as they needed and could not obtain going past them loaded with other commerce. Do you mean that they go in the same direction in which they desire their stock to move?

Mr. MOORE. The stock was located at a given point, and the cars were running east, and Chicago was located east of that point, and they were going in the direction our stock ought to have gone in. At Hannibal, Mo., I have seen cars loaded with lumber going east from there when we were waiting to get cars for Chicago, St. Louis, and Buffalo, N. Y. Now, the question is whether those cars shall be diverted from the purpose for which they were evidently intended and constructed and used for the transportation of these other commodities.

The CHAIRMAN. We have heard this statement made, that a number of cars would be ordered at a particular station; they were furnished, and the shipper would refuse to receive them. His stock was not ready. Would you insist that it was a diversion to load those cars eastward with other merchandise?

Mr. MOORE. Whenever a shipper is guilty of that, he should be penalized right there on the spot.

The CHAIRMAN. But that is not an answer to the question. I am asking you whether you would regard such a transaction as a diversion from a legitimate use?

Mr. MOORE. Certainly not, if there be no demands.

The CHAIRMAN. None right at that point.

Mr. MOORE. But that train dispatcher there, located at that point, knows, as we know the position of checkers on a checkerboard, where these cars are demanded.

The CHAIRMAN. Yes; but they are refused.

Mr. MOORE. If they are refused by any and all of the prospective shippers, then I say—

The CHAIRMAN. Take this illustration in the Pecos Valley. Suppose that those cars were refused at a station in that remote section, but they are needed at Hannibal or on the east side of the river; would you regard the loading of those cars with some other commodity near Pecos station and their movement to Chicago as a diversion such as you have spoken of?

Mr. MOORE. I most certainly would, if the cars could be used in the immediate vicinity, within easy reach—say 100 miles.

The CHAIRMAN. But Hannibal is 1,000 miles from the Pecos Valley.

Mr. MOORE. It would be an unreasonable supposition.

Mr. ADAMSON. You would not require them to run empty half-way back when they could load with something else right there?

Mr. MOORE. It is the duty of the money-makers to load these cars and take something along as they go, no doubt. That is just a little farfetched. While it is reasonable to suppose such a thing, it would not fit in the actual transaction of railroad business occur very often.

The CHAIRMAN. I give that as a concrete illustration, because you would not state to us where the products carried in those loaded cars that passed eastward from Hannibal loaded with other merchandise and stock originated.

Mr. MOORE. Those loads of lumber originated a distance of 20 or 30 miles from where we wanted to load the stock, but could not on account of the failure of the road to furnish the cars.

The CHAIRMAN. Does any other gentleman desire to be heard?

Mr. MOORE. The secretary of the Live Stock Exchange desires something to go into the record here that I want you to ask him some questions on. I have occupied more of your time than I am entitled to, and what he has to say is with reference to the question asked in reference to strawberry cars.

Mr. BAKER. I do not desire to take up the time of this committee at all, but I simply want to furnish a little information.

The CHAIRMAN. We will hear you.

STATEMENT OF MR. C. W. BAKER, SECRETARY OF THE CHICAGO LIVE-STOCK EXCHANGE.

Mr. BAKER. I have noticed in the record of the hearings on this bill, both before the Senate committee and this committee, that a great deal of stress has been laid upon the fact that they have to have certain classes of cars for the transportation of certain commodities. To emphasize that, perhaps in extreme measure, Mr. Stevens spoke this afternoon about cars for the transportation of strawberries, and he said that the season only lasted about three weeks. It seems to me that the equipment for the transportation of freight of any well-organized road consists of four classes of cars—the box car, the stock car, the refrigerator car, and the gondola—any one of which four classes is not used for any particular commodity exclusively. To illustrate still further, these refrigerator cars are used for the transportation of strawberries, bananas, and other fruits, and of meats where meats and packing-house products move along the line of that road, and it does not seem to me that it would be necessary for any railroad to equip itself with cars to move strawberries three weeks in each year.

Mr. STEVENS. Oh, no; of course I did not assume that.

Mr. BAKER. That is an extreme case.

Mr. STEVENS. I did not assume that. I introduced it not only in this hearing to-day, but the preceding one.

Mr. ESCH. As a matter of fact, that kind of traffic is taken care of largely by the private car companies, so that the roads themselves do not have the cars.

Mr. BAKER. Yes, sir; and that is true of stock.

Mr. STEVENS. And is it not true that the larger lines are equipping themselves with that kind of cars?

Mr. BAKER. I did not quite catch your question.

Mr. STEVENS. The Pennsylvania Railroad owns 6,000 or 7,000, I think.

Mr. ESCH. I think it would be a good thing if that were done.

Mr. STEVENS. The Chicago, Milwaukee and St. Paul, the Great Northern, and the Chicago and Northwestern all own their own refrigerator cars.

Mr. BAKER. Yes.

Mr. STEVENS. I think a man who was here the other day told us that they had a peculiar construction of cars for the banana traffic.

Mr. BAKER. That is something new. I have shipped beef from Chicago to the eastern markets in banana cars and strawberry cars and refrigerator cars of all kinds that are used for all kinds of perishable

commodities. A refrigerator car is equipped to carry perishable commodities, but it is not used exclusively for any one kind.

The CHAIRMAN. Can or will the trade use for the shipment of strawberries, we will say, a car that for a long time has been used to transport dressed beef?

Mr. BAKER. Yes, sir.

The CHAIRMAN. We have had gentlemen here say that that would affect the market value of the berries.

Mr. BAKER. In what way?

The CHAIRMAN. By destroying the flavor.

Mr. BAKER. These cars are cleaned after every shipment and disinfected. Take the Swift Line, and the cars are scrubbed out with soap and hot water after every trip they make east, and they are as clean and sweet as a nut; and that is to a certain extent true of other cars.

Mr. STEVENS. I have had many of the representatives complain that they can not use box cars after they are used for the transportation of oil.

Mr. BAKER. Oils are usually transported in what is called a gondola or tank-line car, and they are about as near as they get to a special car; but those are only used on roads that run through oil regions, except the private car lines.

Mr. STEVENS. Some of the limited oil companies who do not own gondola or tank cars have to ship their oil in barrels, and those barrels injure the cars they travel in.

Mr. BAKER. To a certain extent that is true; but that would not hurt ordinary, common freight, the use of those cars for oil in barrels.

Mr. STEVENS. The point I was getting at is this: That if we complied with your request and compelled the furnishing of the cattle cars that were necessary many of the roads might not be able to furnish enough refrigerator cars; or if they complied with the requirements as to refrigerator cars they might not be able to supply some other kind of cars. That is the point.

Mr. BAKER. One other gentleman put it properly, I think. A road in order to handle the business of the territory in which it runs should be equipped to handle the amount of business contingent to the territory. For instance, if they run through a fruit country, they should have more cars of the refrigerator kind than they would of stock cars, and in a stock country they should have more stock cars than refrigerator cars.

Mr. STEVENS. But are you not diversifying constantly out through the western country? Are you not getting more varying freight needs of that kind?

Mr. BAKER. In one way we are. Stock business instead of being a wholesale business, of large ranches, is being cut up into smaller feed lots, and in that way produces more diversification. I merely wanted to make that point clear, and I do not think I have anything further to say.

Mr. MOORE. We have a gentleman with us, an associate, Colonel Van Norman, who has a commission house in Milwaukee and one in Chicago, and I know of no reason on earth why he should not be heard if you will consent to hear him.

The CHAIRMAN. There is no objection on the part of the committee.

STATEMENT OF MR. G. B. VAN NORMAN.

Mr. VAN NORMAN. Just for the sake of going on record as being chaperon for Mr. Moore, I will say that I certainly can comprehend what these stockmen want, and what they want I want, because I am their representative, the receiver of live stock. We passed resolutions in our exchange indorsing this bill first, last, and all the time, as it was. We are here arguing their case, but we are not here antagonistic to railroads. On the other hand, we are friendly to railroads, and we are glad to discuss this with you. We have got a good deal of information from you from the points brought out here by Mr. Stevens and the chairman and others in their questions. We know very well when you put 1,100 tons of freight behind an engine that has been run for six months it is not strong enough to pull that freight at any reasonable rate of speed. What we ask this committee to do is nothing unreasonable. We ask you people to enact a law that will give us active service, 15 or 20 miles an hour instead of 5 or 6 miles.

Now, to illustrate the point, last spring I shipped ten carloads of cattle at my farm at Elgin. I loaded them at 5 o'clock in the afternoon, and they took them to Western avenue and kept them until 2 o'clock in the morning, and then hitched them on to 1,100 tons of freight and used them in switching backward and forward, making up their train; and it is 8 miles from Elgin to the station where my farm is, and they were forty minutes in going that distance. You can see the difficulty; it is caused by overloading. It is no use for us to say that these railroad companies can furnish a complete set of cars for every commodity; it would be unreasonable for us to try to induce you people to say that if some man at Cheyenne, or away out West there somewhere, had a train load of cattle, this railroad company must be expected to, and must, haul those 25 cars out there empty and not take anything out. If they did, that man ought to pay for that privilege. We can not expect that. We are only here wanting a fair and square deal; we are not here fighting the railroads. On the other hand, we people in Chicago are friendly to railroads, because they are friendly to us. Our local conditions are not so bad as the western conditions, although the main trouble with our local affairs as a rule is caused by the terminals, by the fact that we have not terminal facilities enough to bring our stock into the stock yards. Take our case there. There are many times when stock will start from Sparta, Wis., at 11 o'clock in the morning, and get to Western avenue, 7 miles from the stock yards, about, we will say, 5 o'clock in the morning. Many times that stock does not get up to the stock yards to unload until 12 o'clock noon. Why? Because we are so congested, with 2,000 cars, perhaps, receipts that day, that they have not facilities for unloading. That is the only grievance we have. The main grievance is, therefore, that of the western people, on which we are here to help out.

The CHAIRMAN. Which western people? Take, for instance, this case. The provisions of this bill require that the road which brings the cattle of a Texas man, we will say, the train arriving with the cattle at Kansas City, shall demand from the Burlington or the Rock Island or the Wabash the same number of cars that it delivers. Now, those cattle cars are wanted in Iowa for the shipment of cattle

that are in Iowa. Do you propose to take away from us—do you think that is fair—our own facilities that are owned by the road that serves us to serve the Texas gentlemen?

Mr. VAN NORMAN. I am not a railroad expert.

The CHAIRMAN. But you have indorsed this bill.

Mr. VAN NORMAN. We have indorsed this bill because we were so instructed by our exchange, and we are representing our clients.

The CHAIRMAN. Does your exchange propose to take away from the Illinois or the Iowa shipper these facilities?

Mr. VAN NORMAN. We have great confidence in the ability of this committee, your committee, and know that you will do exactly what is right, and so far as we are concerned we are very glad to leave it in your hands, to add to or eliminate anything you desire. I would not like to go on record dissecting this bill.

The CHAIRMAN. No, but you come here—

Mr. VAN NORMAN. We came here.

The CHAIRMAN (continuing). And present to us in favor of this bill in its entirety, as you said awhile ago, the whole force—moral force—of your great organization.

Mr. VAN NORMAN. As I told Mr. Moore this morning, I knew this point would come up. We came here representing our clients, you understand; and no matter how big a criminal he was, or what we thought he was, we have got to represent him. We are just representing him on those lines.

Mr. ESCH. That is frank!

Mr. ADAMSON. You would never admit that he is a criminal, even after he is convicted, would you?

Mr. VAN NORMAN. No, sir. We believe, Mr. Chairman and gentlemen, that there is a great deal of merit in this bill.

The CHAIRMAN. Would you not be entirely content and would you not approve, if any legislation is to be enacted, that it should be of such a character as would invest the Interstate Commerce Commission with power to act in its judgment with regard to the general subject of car distribution?

Mr. VAN NORMAN. Personally, yes; but, representing the livestock exchange, no. Personally I would be content.

The CHAIRMAN. I would rather have your individual opinion than your representative opinion.

Mr. VAN NORMAN. I have not consulted with my constituents.

Mr. MOORE. May I interrupt both of you?

The CHAIRMAN. You certainly may.

Mr. MOORE. I want to say that this bill has received the unqualified indorsement of these exchanges simply because it contains the two features that I have emphasized to-day. Now, I regard the one as academic, and without the pale of our having anything to say about it or having any influence in reference to passing that feature in the law.

The CHAIRMAN. You must remember this, gentlemen, that your opinions do have influence, if we can find out just what they are.

Mr. MOORE. But I am trying to account, and the reason I am on the floor is to account, for this unqualified and unequivocal indorsement on the part of the exchanges of the two things I have emphasized to-day, and I insisted this morning that we do not insist on the exact form of the bill. Now, I would not have the salient features of the

bill to fail simply because there might be a handicap there that would weigh it down.

The CHAIRMAN. But the provisions of this bill, Mr. Moore, discriminate against some of your own customers. You undoubtedly represent a great many Iowa shippers in your business in Chicago, and yet the bill you advocate proposes to take away from the Iowa shipper the facilities that naturally belong to him, that are owned by the road that serves him, and give them to your Texas correspondents. Why do you want to discriminate against the Iowa man?

Mr. MOORE. The first sentence I heard this morning was this, that the Culberson-Smith bill seems to furnish a basis for the correction of these evils, and I have studiously avoided the one feature of it, and emphasized the two, because I know that the two remedies I seek are the ones that are desired by your clientage and mine, too.

The CHAIRMAN. Let me ask you, also, what I asked your colleague. Would you be content with legislation which would invest the Interstate Commerce Commission with the power——

Mr. MOORE. I have no hesitancy in saying, yes.

The CHAIRMAN. Mr. Baker, may I ask you that?

Mr. BAKER. Unqualifiedly, for this reason, that I think a specialist can provide a great deal better for legislation than a large body of men.

Mr. ESCH. There is no trouble about delaying shipments of stock between the Twin Cities, and Milwaukee and Chicago?

Mr. MOORE. Oh, yes, sir.

Mr. ESCH. I think they run them on special trains, and generally run them on Sunday trains.

Mr. VAN NORMAN. Lots of times stock loaded in St. Paul does not get in until noon, or too late for the day's market. The trouble is just as has been stated to you, what has been hashed over here all the time; there is too much tonnage. That is all there is to it. Of course there has been so much legislation and there have been so many things of that kind, that the railroad companies feel that they must do everything they can to load their cars to full capacity, and, of course, if there is a full train of stock going out of St. Paul in the cattle season, they would have no trouble in getting a through run with stock; but if they only start out with eight or ten cars of stock, it is not natural to suppose that they are going to run that train without some dead freight. If there is any wheat or lumber or dead freight of any kind between St. Paul and Chicago, they naturally hitch it on and get a full train, and sometimes they go and switch out, and lose the right of way; and the terminals are limited and they get shut out and can not make time, and that causes delay; and the railroad companies are very fair about that. If, for any cause, they can not get through, we make out a bill of damage for what they have damaged our stock and we get paid for it.

Mr. STEVENS. Is it not true that the Chicago, Milwaukee and St. Paul have not used what you call the tonnage system for some time; that they have abandoned it?

Mr. VAN NORMAN. They do use it.

Mr. STEVENS. I understood that they were the one road out there that had changed their system and did not use it now; that they had abandoned it and denounced it.

Mr. VAN NORMAN. I have not heard of it; but if they say so, they will do it. Their business has increased more than their capacity. That is what Mr. Calkins told me last fall. I made out a good many bills of damages, and he recommended paying them rather than have any foolishness or suits, and he said that the business had increased more than their capacity.

Mr. STEVENS. I understood that the Milwaukee, Chicago and St. Paul did not use the system of tonnage in managing freights that was used by the other roads.

Mr. VAN NORMAN. It has been within the last ten months, then.

STATEMENT OF MR. CHARLES C. PAULDING, REPRESENTING THE NEW YORK CENTRAL SYSTEM.

Mr. PAULDING. One remark suggested by your questions to these gentlemen as to the advisability or feasibility of throwing this matter into the hands of the Interstate Commerce Commission. When I was before you two or three weeks ago I cordially indorsed that recommendation, and it gives me pleasure not only to reiterate that, but to say that it is not only my personal opinion, and I have been seventeen years with the road I now represent, that that should be done, but I am instructed by the people I represent to cordially indorse it before you, and to say that that is their opinion, too, and I represent a system of 11,000 miles of road.

(At 3 o'clock p. m. the committee adjourned.)

STATEMENT OF MR. W. H. WILLIAMS, THIRD VICE-PRESIDENT OF THE DELAWARE AND HUDSON COMPANY, OF OBJECTIONS TO H. R. 4007 AND 13841.

First. It compels each individual road to provide facilities for the maximum tonnage that it is possible for all industries to give to it at one time, without any obligation on the part of the shipper to use such facilities. Is this fair and equitable to the transportation companies?

The traffic of the United States is constantly shifting.

(a) The erection of cotton mills in the South has materially affected the importance of the New England States in the manufacture of cotton piece goods.

(b) Formerly, owing to the nondevelopment of ocean trade via Gulf ports, the export grain of the United States had to be marketed principally through Atlantic coast ports, and most of this went via New York, Philadelphia, and Baltimore. There were, of course, some shipments via Norfolk. However, the expenditures which the roads of the Middle West have made in building lines into New Orleans and Galveston, and in terminal developments at those points have attracted to the Gulf this traffic, and to-day the grain from the great grain districts of the Mississippi Valley is being exported via Gulf ports.

(c) While Savannah continues to export considerable cotton, the present tendency is to increase the cotton shipments via Gulf ports rather than via the Atlantic seaboard.

(d) While Pittsburg continues to be the center of the iron and steel industry of the United States, the general tendency of the past six or eight years has been to locate along the Lakes, and there are very

large mills at Cleveland, Gary, Lorain, and Chicago. Not only does this affect the handling of the finished product, but also the car movement in the handling of coal, iron ore, limestone, and other raw material.

(e) The State of New York is now spending \$100,000,000 for the construction of a barge canal, which it is publicly stated will handle considerable of the tonnage now moving via rail lines from Buffalo to the Atlantic seaboard.

There is a movement on foot to secure an annual appropriation from Congress of \$50,000,000 for the development of waterways, such as a ship canal from Chicago to the Mississippi River, and slack-water navigation on the Ohio, Mississippi, and Missouri rivers, which it is publicly stated will handle the greater part of the commodity freight now moving by rail in those districts.

Must the roads go on making expenditures of money up to the day that these waterways are put into use when the officers of the road are told that after that date there may be no use for such increase in equipment?

The lines now entering New York are powerless to prevent the diversion of the grain traffic to the Gulf; the lines of the South are powerless to prevent the increasing export shipments of cotton via Gulf ports; the lines in the Pittsburgh district are powerless to prevent the building of iron and steel mills along the Lakes; the lines of New England are powerless to prevent the erection of cotton factories in the South.

While the above may be said to indicate the great changes that are continually taking place in the direction of traffic of the country, yet they are typical of the changes that are constantly taking place to a lesser degree as affecting individual roads due to the development of competition (either of new lines, improved operation of existing competing lines, or the building or improvement of new industries competing with those on such lines).

It is probable that no one in the beginning of 1897 had the faintest idea of the remarkable development in the commerce of the country which has since taken place. A great many of the roads of the country had just come through bankruptcy proceedings, and were not in position financially to invest money in equipment, nor were they in position to satisfy the bankers that the prospects were such as to warrant the bankers advancing additional funds to provide such equipment.

As soon, however, as the increased business was assured, the railroads without delay proceeded to purchase additional locomotives and cars, and to improve their track and terminal facilities. In their effort, however, to meet the situation, they were very seriously delayed by the inability of the manufacturers of railway equipment to fill the orders. At times it was impossible to contract for equipment providing for delivery of any of it under eighteen months after date of contract, and even then the equipment companies were not able to make the delivery at the time specified. There was equally great delay in securing rails, cross-ties, and other material needed in construction of additional main tracks, yard tracks, sidings, as well as in all of the building trades.

Is such delay chargeable to the railroad companies or to the persons in whose interest the bill is supposedly drawn, viz, the manufacturers?

Second. There are many things which affect the movement and thereby, either directly or indirectly, affect the car supply, and over which the railroads have no control.

1. (a) Labor troubles at the plants of the industrial concerns. (b) A strike of the vessel men would tie up the movement on the Great Lakes, and would very materially increase the all-rail shipments. This may come with but little warning, and without giving the railroads an opportunity to meet the new situation. (c) The miners in the Pittsburg district, for example, may go on strike, thus forcing the consumers of coal to draw their supply from other districts, very materially increasing temporarily the demand for cars in such districts. Must the roads in these districts, such as, say, Indiana and Illinois, be prepared to handle increased traffic due to labor troubles in the Pittsburg district, when such troubles may only last one week or two weeks or, say, a month, and then the roads in Indiana and Illinois would have no further use for the cars for possibly three, four, or five years, depending on further labor troubles.

2. The movement of coal to Lake ports and the movement of ore from Lake ports is quite largely dependent upon the vessel tonnage, and the railroads endeavor to keep in touch with the situation, and have the coal routed to Erie, Ashtabula, Lorain, Sandusky, Toledo, etc., depending on the point to which vessels coming south with ore are destined.

This same condition exists at the Atlantic seaboard with reference to Boston, New York, Philadelphia, Baltimore, and Norfolk, the export grain movement depending quite largely on the vessel tonnage, and it also applies to the Gulf ports, such as New Orleans, Galveston, Mobile, and Port Arthur.

3. Washouts, landslides, and wrecks on one road will necessarily affect the ability of that line to promptly move the cars in transit, and therefore affect its ability to supply cars. Under these circumstances shippers usually endeavor to divert their business to other lines, thus increasing the burdens on the other lines temporarily.

Third. The title to the bill indicates the purpose is to secure an adequate supply of cars at all times, for all shippers, and under all conditions. I am of opinion that the passage of a law requiring roads to exchange "car for car" will not better the conditions said to have existed in 1907, but, on the other hand, will transfer the seat of the trouble and cause loss of property.

In the moving of crops, such as grain, cotton, hay, melons, strawberries, fruits, etc., it is the practice of the roads on which the shipments originate to begin, some six or eight weeks before the crops begin to move, to accumulate cars—and this is done by holding on to every car coming on the line which is not necessary for outbound loading. After loading with grain, it requires another six weeks to clear the line of cars loaded with grain.

Warm weather advances the crops, while cold weather retards them, so that the length of time that such cars are stored awaiting loading is dependent somewhat on the weather.

In the case of grain, this practice of storing cars is necessary because of insufficient elevator accommodations in the grain-growing country,

and even where roads fill every available siding with empty cars the crops in a good season will exceed the car supply, necessitating storing the grain on the ground alongside the tracks.

In the case of melons, fruit, berries, etc., owing to the perishable nature of the commodity, it must be handled promptly, and as they require special equipment (refrigerator cars) it is also necessary to store cars in advance of the time the crops begin to move.

The bulk of the grain crops move within a short time after harvest; the cotton crop moves promptly to the ginning mills, while fruit, berries, and other perishable commodities must move at once.

During these periods the demands made upon the roads handling the respective crops are very abnormal. If, under these circumstances the roads exchange "car for car" the roads on which the crops originate will be unable to store cars in advance of the movement of the crops and the latter must necessarily be badly damaged.

Will only the originating road be responsible? Ought not all roads to be called upon to meet these abnormal conditions?

Fourth. The bill makes no provision for embargoes.

When grain is moving it is not unusual to have from 5,000 to 15,000 cars loaded with grain at a seaboard port awaiting vessels. Certainly the roads which contract only to move the grain to seaboard can not be held accountable for the fact there are no vessels there to take the grain from the cars.

The storing of such a large number of cars in one seaboard city seriously affects the operation of the yard and delays the handling of other traffic. Under these conditions the delivering road (*i. e.*, the road taking the grain to seaboard) places an embargo on grain for that city until such time as the accumulation is worked off. Were it not to take such action, the entire road would soon become blocked and the movement of all traffic stopped.

This same thing applies to fruit, hay, etc. It is the usual practice to consign fruit, hay, etc., "to order" at some large central market, depending upon the ability of that market to absorb the shipments when received. This, however, can not always be done, and the railroads place an embargo on these shipments consigned to a city already having more than it can take care of. Otherwise the shippers—many of whom have no way of ascertaining the conditions at the several markets—would continue shipping to a place already congested, resulting in the fruit, berries, and other perishable freight rotting in the cars. Not only this, but the arrival of such a large number of cars in excess of what the community could take care of would greatly delay the unloading of the cars and correspondingly increase the difficulties of the carrier to handle the traffic.

Clearly these embargoes are of benefit to the shippers—by preventing unnecessary loss of goods and by enabling the transportation companies to more nearly place at the service of the shippers the maximum capacity of the line.

Fifth. Sufficient provision has not been made to insure the return to the owning road of its cars.

The American Railway Association rules, under which the roads are now working, provide that cars when empty must be loaded in the direction of home; and they have given thought to the advisability of inflicting a very heavy penalty for violation of said rule.

Experts tell us that the condition of our equipment is better than the average of all equipment now in use in the United States.

Be that as it may, we do know that we have made every effort during the year to fully maintain it. Unless we can get the cars home, however, we can not keep it fully repaired—and this must result in a decided decrease in its life of usefulness, thus materially affecting our cost of operation.

It stands to reason that a road in need of cars will not fully repair cars of other roads when a few minor repairs will let them use the car at once for the particular shipment in question.

In like manner, the cars would be knocked about from road to road, each making no repairs not necessary to protect the one shipment for which wanted or to get another line to accept the car.

Sixth. The bill is inconsistent in its provisions, and apparently applies only in periods of prosperity. What of our present situation? There are hundreds of thousands of idle cars in the country to-day, and the roads appear to be approaching a return of the period that prevailed some eleven or twelve years ago when they did not earn their fixed charges.

Apparently, the framer of the bill feels that if the shipper is to be penalized for delays in loading or unloading cars the roads should be penalized for not furnishing them.

If the roads are *compelled* to buy more cars, ought not the shippers to be *compelled* to use them?

Then, too, the present difficulty is to get empty cars off the line so as to avoid payment of per diem. The bill, however, does not obligate the other road to take the car except on the basis of "car for car."

Seventh. The exchanging of "car for car" will increase the empty mileage and correspondingly reduce the use of existing equipment, thus producing a result directly opposite that sought by the framer of the bill.

At present cars can be loaded "in the direction of home," but need not necessarily be given to a particular connection. For example, Missouri Pacific, Louisville and Nashville, or Rock Island cars going into the New England territory via New York Central lines can now be "loaded in the direction of home" to, say a point in West Virginia via the Baltimore and Ohio or the Pennsylvania Railroad, when it would not be possible to load for such point via New York Central lines.

It seems to me the framer of the bill has assumed that the business from one territory to another is equal in both directions. This is not true, and to require the car movement to be equal where the tonnage is not would result in increased empty car mileage.

Eighth. The framer of the bill does not apparently realize the power that would be placed in the hands of a few people to work great harm to the railroads. For example, all the grain elevators at Chicago and Kansas City are, at times, completely filled. Supposing the market is quiet, and there is no particular demand for grain. It does not cost any more to store it at Boston, New York, Philadelphia, or Baltimore than it does in Chicago, and these people could turn all the Chicago grain over to one road for movement to one port. It would, of course, be absolutely impossible for the road to supply the cars within such time as is suggested in the proposed bill,

and the penalty which it is proposed to inflict would more than pay the cost of carrying the grain in the elevators until such time as it could be marketed.

Conclusion.—The framer of the bill apparently admits the futility of prescribing by legislative action a set of rules for the interchange of cars as well as a set of rules governing car supply, when he asserts in the bill the provisions shown as section 3, which apparently give to the Interstate Commerce Commission full power to waive all the conditions prescribed in the other sections of the act and to also prescribe new ones. Is it not fair to assume the other clauses are simply inserted to cover up the real purport of the framer of the bill; viz., to increase the powers of the Interstate Commerce Commission?

My own feeling is that they should first examine existing conditions and determine the cause of car shortage, with a view to suggesting some means for removing the causes, fully believing that such investigations will conclusively prove that the proposed law would tend to increase rather than decrease the shortage of cars.

I am also of opinion that the interests of the railroads and the shippers are mutual, and that better results can be attained by the shippers organizing associations for the study of these questions and teaching shippers how to assist in bettering conditions. This can be done by their associations keeping the grain shippers informed regarding the movement of grain and prevent sending it to ports when there are no vessels to take it away; also, prevent sending fruit and vegetables to markets having a surplus and prevent delays to equipment and loss of shipments.

STATEMENT OF MR. M'PHERSON, OF THE MISSOURI PACIFIC RAILROAD COMPANY, OF OBJECTIONS TO H. R. 4007 AND 13841.

While the general business public, the railroad commissions, the legislatures, the court, and the executive officers of the Government have seemed to regard but one element—that of movement,—there is another element of much greater importance that has been entirely overlooked—that of capacity to promptly dispose of traffic at its railroad destinations. While the cry has been “more cars” and more cars have been furnished, the result has been to crowd the terminals all over the country to such a point of congestion that the railway companies could not switch their yards, and cars have been indefinitely tied up as warehouses, because the business interests owning the traffic had utterly failed to provide for its disposition and release the cars for the use and purpose for which they were built—carrying units of commerce.

How well the railway companies have provided the cars, which should under properly balanced commercial conditions provide for the handling of all the commerce that has ever been offered, is apparent at this time of business depression, when the principal railways in the country are taxed to find sufficient standing room for their empty cars where they will not impede the movement of trains.

Every town in the country through which a railroad passes originates freight traffic, either for consumption or use in the cities or for export to other countries, centralizing at export points and important cities and towns an enormous tonnage principally in carload lots, for very little of which the railroads would be permitted to fur-

nish warehouse rooms even if able to do so. The receivers of the traffic depend upon its transfer direct from cars to steamers or from cars to consumers, having no warehouse or ground facilities of their own in which the contents of the cars can be promptly discharged, releasing them. The receivers of freight demand free time ranging from twenty days at some export points downward, and while the legislatures are busy with reciprocal demurrage laws to force the railroad companies to furnish cars they are also active in framing laws prohibiting the railways from adopting measures to force the unloading and release of cars within a reasonable time after reaching their destination.

When a car reaches its destination it ceases to become a transportation unit and is forcibly converted into a warehouse, because the receiver, who has ordered the traffic it contains shipped to him, has not provided means to take care of it and is converting the car to a purpose for which it was not intended and depriving the shippers throughout the country of its use as well as the railway company of the revenue that it should earn in the carriage of further business.

Some very valuable data were secured by a special committee appointed by the American Railway Association which, by collecting reports from the various railways, showed that for the six months period ended December 31, 1906, the railways owning 1,600,643 freight cars reached an average daily movement of but 24.2 miles per car per day.

Assuming to allow average daily train movement of 8 miles per hour would accomplish 192 miles per day, and assuming forty-eight hours as reasonable time for unloading after car reaches destination, it is very easy to calculate the loss to the business interests of the country by the conversion of freight cars to warehouse purposes. A car that can be loaded at an elevator or a coal mine in from twenty minutes to one hour and promptly moved several hundred miles in the succeeding forty-eight hours, is forced by local state laws or by the demand of consignees to perform warehouse service for a minimum of two days or a maximum of twenty days without compensation to the railways therefor. If the cars are held a longer period for such warehouse use, the railway companies are permitted to charge \$1 per car per day for such further use. Meanwhile, the railway yards are full of such cars, causing difficulties in operation which result in further delay, and the shippers are still clamoring for more cars.

The railway companies in buying more cars have been furnishing more warehouses for the use of the receivers of traffic and adding to the congestion, because when all of their cars are loaded and moved to destination the congestion extends farther back from destination and nearer to the point where the traffic was loaded.

If inquiry were only directed to the facilities that the commercial interests have provided to take care of the increased business of the country during the past ten years and the results of such inquiry compared with what the railways have done in the same direction, information could be secured useful to devising a remedy, but so long as the business public excludes from its religious reading the seventh chapter of Matthew, third verse, the railways will probably continue to be charged with all of the shortcomings in the distribution of the enormous traffic of this country.

Even if the scope of consideration included greater terminal possibilities, it would still mean the greater use of railway cars for warehouse purposes. In the use of cars as warehouses the receiver of freight has converted to his individual use facilities furnished by the railway companies for the benefit of shippers as a whole, and reciprocal demurrage, as planned in this bill, is a penalty to be paid by a carrier, not for something it receives or unduly retains, but for failure to supply that which it does not and can not possess and from the possession of which it is, to a considerable extent, debarred by the failure of its patrons as a whole to realize and fulfill their obligations to other shippers and to the railway company, and logically if the carrier can be so penalized actual reciprocity would require shippers to furnish loading at all times for all cars available.

The principles underlying the car-service proposition are:

First. Freight locomotives and cars represent from one-fifth to one-sixth of the total capital invested in a railroad and are practically the only portions of the property which produce revenue, the value of the remaining four-fifths or five-sixths depending entirely upon the use made of the one-fifth or the one-sixth.

Second. Locomotives and cars can only be of value to their owners when moving under load or toward the loading point.

Third. Cars are at times very valuable to consignees for storage purposes on the basis of the present low demurrage rates.

In imposing a demurrage charge for the use of these cars beyond a reasonable time for storage purposes the railway is justified, because it is a charge for the use of property, while penalizing a railway for failure to furnish cars is a fine for omitting to do that which the self-interest of the carrier makes imperative, and such a proposition could not obtain an audience except under the extraordinary political and commercial conditions which now prevail.

The conditions in the various sections of the United States vary in the ratio of production and consumption of the commodities that make up the traffic of the country. A railway traversing States which produce more than they consume will, in the free interchange of equipment, lose its cars to other railways leading to and reaching the markets, because the traffic it receives for consumption in its territory is insufficient to balance its outward shipments.

Roads dependent largely on the products of agriculture for their business find themselves in this situation, and no reasonable expenditure for cars would enable them to supply the demand unless their own cars are returned from the market promptly, which in crop-moving seasons is not done because of the failure of receivers of freight at destination to unload the cars so they can be promptly moved.

This bill seeks to penalize such railways because of a business condition beyond their control, and while the railway company is justified in imposing a demurrage charge for the use of its cars, the purpose is not to secure revenue for such use of the cars, but in the interest of the shippers of the country as a whole to secure their prompt release.

Referring again to the report of committee of the American Railway Association showing transportation performance for the six months ended December 31, 1906, the average daily earnings per car owned by the railways was \$2.59, and it will therefore be seen

that the car-service or demurrage charge of \$1 per day does not compensate the railways for the loss of its use in the service for which it was built, and the objection of consignees to the payment of this nominal rate for the use of cars detained beyond a reasonable time for warehouse purposes may be taken as an index of the value consignees place upon warehouse facilities.

While it is costing the railway companies \$2.59 per car per day while in warehouse use, and the consignee protests against compensating the railway company at the rate of \$1 per day, it must be clear that warehouse facilities could be provided by the consignee at less cost, or at least he believes so; otherwise he would not object to paying the railway for the use of its cars while converted to his individual use.

There are several elements that have aggravated the situation in the past few years, such as the longer distance to market from the point of production. Formerly the railways were embarrassed in handling the commerce of the country only during the crop-moving period. These seasons have grown longer every year because of the exhaustion of the forests in the lake States, the growing wealth that the country has derived from these crops going into improvements requiring the heavy movement of building and other material, which must be hauled longer distances than heretofore, producing transportation inequalities which, at certain seasons of the year, are difficult if not impossible to balance.

The present is an era of great speculation, but no known form of speculation offers the certain profits which the proposed legislation would pour into the coffers of that class of shippers having facilities to load from 20 to 100 or more cars per day. Other forms of speculation require some investment, but this requires only such a superficial knowledge of the car situation as every shipper has in time of shortage; and the placing of an order with every road available for the maximum number of cars the shipper has facilities for loading, with the absolute assurance that the furnishing of over 10 per cent of the order is a physical impossibility, the penalties for failure to furnish the other 90 per cent will be the handsome profit.

What limitation is there to the operation of a coal company from whose mines 50 cars per day can be produced or the operation of any other large shipper? It will be observed that the small shipper can get no benefit whatever from this law, the working out of which would doubtless deprive him of his portion of a fair quota of the cars available.

No railway company can get any benefit from the prompt unloading and handling of cars, without at the same time benefiting shippers, and every railroad uses its best efforts to hasten the unloading of its cars. It is, however, confronted with a commercial condition that it can not control, viz, the inability of the receivers of freight who have offered the traffic shipped to them to promptly dispose of it on its arrival.

It will be noticed that the proposed bill discriminates in favor of the shipper of live stock, giving him a remedy in punitive damages. This discloses the special interest of Texas in this legislation. Other States would probably wish the punitive clause extended to shipments of citrus fruits; still others to vegetables, while all would want their dominant interests specially cared for.

In conclusion, the penalties proposed in this bill, or any penalty which might be named, would not move an additional ton of freight nor furnish a single additional car, because the railroads are doing everything in their power to attain a maximum use of their property; but, on the contrary, the penalties collected will deprive the railroads of the means to enlarge and increase their facilities, or possibly bring about their financial ruin.

STATEMENT OF MR. C. W. KOUNS, ASSISTANT TO THE SECOND VICE-PRESIDENT OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, OF OBJECTIONS TO H. R. 4007 AND 13841.

I have understood that Mr. Cowan, when presenting his oral arguments favoring the bill, made some reference to conditions alleged to have existed in Texas in years gone, under which stock cars were interchanged and run about as proposed in this bill.

The conditions outlined, I happen to know, did not exist, and consequently this bill does not reflect practice which at one time was found practicable. The facts giving rise to that contention were:

(a) Large movements of cattle from Texas, usually continuing from March 25 to May 1 and from September 15 until October 31.

(b) The bulk of the cattle originated then, as it does now, on the line of the International and Great Northern Railroad west of San Antonio on the Lampasas branch of the Gulf, Colorado and Santa Fe; on the Texas and Pacific Railway west of Fort Worth; San Antonio and Aransas Pass Railway; on the Southern Pacific west of San Antonio and east of El Paso, and on the Pecos Valley.

(c) This stock was moved to pastures farther north, or to market.

(d) Car orders were usually placed by each shipper, the loading dates being followed according to the ability of each to round up and "cut out" the grades for each destination.

Practically all of the roads competing for this business made a practice of strengthening their equipment for the spring and fall movements by borrowing or leasing large numbers of cars. We have as many as 2,000 such cars engaged. The Missouri, Kansas and Texas, the Texas and Pacific, and the St. Louis, Iron Mountain and Southern were also large borrowers of cars for use in this traffic.

The handling of these cars when applied on orders from connecting lines gave rise to the surmise that a free exchange was current, but, as will be shown, no such arrangement existed. Roads competing for the final haul, or rather the longest haul, from the several districts tendered cars to the loading roads as a means of influencing the routing.

So sharp was the competition that one was not sure of the shipment after cars were delivered, nor were cars delivered always returned. Shippers were induced to change from one road to another, even after cattle were loaded. It so fell out that roads delivering empty cars in southern Texas were many times tendered the same cars in Chicago or Kansas City after the load reached destination. In many instances these cars were accepted and again hauled back to southern territory, empty, making two empty hauls without compensating loading or any loading to offset the expense. Roads felt compelled to assume this extra cost because the short time during which the traffic continued made them stand to lose to their competitors business which had to be taken quickly if taken at all.

During one of these short periods our line hauled about 700 of these cars from Chicago and Kansas City to Texas twice, they having been loaded north by our competitors and delivered to us empty, after being unloaded at the market or in northern pastures. Under these circumstances the roads supplying the cars had to adopt measures of relief which, when done, had the effect of ending the practice.

Cars were afterwards sent abroad for a specific purpose and with the understanding that they would be used for the purpose for which delivered and nothing else. It is doubtful whether any of the car-supplying lines made enough to pay the cost of service during the periods above referred to.

Any car for car arrangement is going to be found so unfair, undesirable, and impossible that it must fail no matter what the penalties may be.

Unfair, because no such exchange can preserve the value of equipment equally between roads forced to comply with a regulation of that kind.

Undesirable, because each road carries much traffic peculiar to the industrial development throughout its territory, for which it has provided specially designed cars.

The interests of commerce and many other reasons ought to permit the retention of such cars on the owner's rails.

Impossible, because the exchange must be dependent upon conditions that neither the delivering nor receiving line first concerned can control or influence. For certain of these conditions the shippers and receivers of freight are alone responsible.

It is doubtful if the movement has of late years been much reduced as to speed between terminals or as to the load drawn as per engine driver.

Mr. Peabody has prepared some statistics on this point, as well as other features of general car, train, and engine handling, which he will lay before you.

The bill lays an impossible task before the Commission. We can not hope that body will find a way, under the proposed law, to so administer it as to produce results which will be satisfactory to the vast interests scattered all over the United States which will be made dependent upon its regulations for the handling of details, which, under the natural order, must be immense in number and constantly growing and changing in character.

Apparently the interchange with Canadian roads and those of the Republic of Mexico has been entirely overlooked.

Many thousand cars are owned or controlled there and the business carried on is intimately associated with that on this side of the border.

I am informed that Judge Cowen before the committee on the 21st urged as one of the reasons for favorable action on the Culberson bill that a shortage of stock cars now exists in certain sections of the Southwest. His information in that respect is certainly erroneous. I do not know and can not hear of any road in that section at this time without more than sufficient cars to meet all requirements. In a telegram received to-day from General Manager Pettibone, at Galveston, he makes the statement that he has on his line 300 empty stock cars which could be used for stock shipments, if necessary, but which are being used for other commodities, because at this time there

is no demand for them in the movement of live stock. So far as this road as a system is concerned in the matter of stock cars, a surplus has existed for several months. We had difficulty to place enough cars, particularly in the Panhandle of Texas during the fall months last year, due to the fact that our line of road was being rehabilitated, and in consequence track conditions were such as to seriously impede the prompt operation of trains and the movement of cars. The stock-car equipment on this road aggregates 7,491 cars, which is an increase of 3,213 cars, or 75 per cent, over the number operating in 1906. Not only that, but the number is greater than the total shipment of live stock in any single month out of eight months in each year. That is, if the whole equipment was entirely devoted to that traffic it would be used but once in such months. In the busiest season the number, if loaded twice, would more than accommodate the whole number of carloads handled. The train haul, that is, the number of cars or tons hauled per train, is larger than in the years gone. Engines are more powerful, traffic more diversified, the volume larger, and the rates are lower, wages, material, supplies, and other expenses of operation are higher, so that to avoid congestion of track and to operate within the limit of cost, these heavier engines and heavier trains must be made use of.

The tendency of legislation is toward compelling carriers to strictly perform all their duties as such, and also to make them responsible for conditions brought about by the inactivity of the public in supplying facilities for taking care of traffic before it starts and after it reaches destination. As an instance, the situation at Chicago during the winter of 1907 may be cited. At that time, in the neighborhood of 100,000 loaded freight cars awaited delivery, although the whole country was crying for more cars. The practice of the stock interests is to crowd their shipments into the shortest space of time and then complain because each one is not provided for and given movement at maximum speed. Moreover, the orders in certain sections many times aggregate more cars for loading on a single day than could be handled in ten if the railroad applied its whole equipment to that particular traffic. I recall that orders for cars for use in a single week on the Pecos Valley lines last fall aggregated more than 3,000 on that line, and the train haul is not beyond twenty cars, so that it will readily be seen that no legislative provision could have moved the live stock in a manner and at the time these orders were placed. There are about 392 junction points on this system where cars are exchanged with other roads. Does any one believe it practicable to stand cars of all kinds at each of these junctions to deliver in equal exchange for cars received? Whether the operation of control can be extended to compel the delivery of property to other than its owner, no matter what regulation be made as to compensation while absent, is open to question which the lawyers or courts must determine.

I am informed that Judge Cowen made the statement to the committee that Judge Terry, of Galveston, agreed with him that this bill should pass. In that connection, attention is invited to the attached telegram from Judge Terry in which it is shown that Judge Cowen is mistaken in his recollection as to what took place between himself and Judge Terry on that subject.

The reciprocal demurrage features of this bill are distinctly bad. I do not know how the committee can possibly subscribe to its provisions in that regard or how it would be possible to operate under it if enacted into law.

GALVESTON, February 15, 1908.

J. W. KENDRICK, Chicago:

Judge Cowan is mistaken in the statement that I agreed with him, that a car-pooling bill should pass. I am confident I never had a conversation with him about the bill pending in Congress during session of last Texas legislature. When it became apparent that some kind of a bill would pass, Judge Steadman and I did confer with Judge Cowan in an effort to remove some of the objections to a substitute bill which he had prepared. Some of our suggestions were accepted by Mr. Cowan and others were not. In a discussion before conference committee that committee accepted some of our amendments to Mr. Cowan's bill and declined to accept others. Judge Steadman and I expressly stated to the conference committee that we did not wish anything then done by us to be considered as a waiver, morally or otherwise, of the right of thereafter attacking in the courts the feature of the bill requiring railroad companies to send their cars off their lines.

J. W. TERRY.

Junction points on Atchison system.

Station.	Number of roads.	Station.	Number of roads.
Atchison proper:		Atchison proper—Continued.	
Abilene.....	2	French, N. Mex.....	1
Albuquerque.....	1	Galesburg, Ill.....	1
Alma, Kans.....	1	Garnett, Kans.....	1
Alva, Okla.....	1	Girard, Kans.....	1
Anthony, Kans.....	4	Gower, Mo.....	1
Argonia, Kans.....	1	Guthrie, Okla.....	4
Arkansas City, Kans.....	3	Harper, Kans.....	1
Atchison, Kans.....	3	Hurdland, Mo.....	1
Augusta, Kans.....	1	Hutchinson, Kans.....	2
Bartlesville, Okla.....	1	Independence, Kans.....	1
Bee Creek Junction, Mo.....	1	Iola, Kans.....	2
Belen, N. Mex.....	1	Isleta, N. Mex.....	1
Big Blue Junction, Mo.....	2	Jansen, Colo.....	2
Blackwell, Okla.....	1	Joliet, Ill.....	4
Bucklin, Mo.....	1	Kansas City, Mo.....	16
Burlington, Kans.....	1	Kennedy, N. Mex.....	1
Burrton, Kans.....	1	Kingman, Kans.....	1
Byars, Okla.....	1	Lansing, Kans.....	2
Caldwell, Kans.....	2	La Plata, Mo.....	1
Caney, Kans.....	1	Larned, Kans.....	1
Canyon City, Colo.....	2	Lathrop, Mo.....	1
Carrollton, Mo.....	1	Lawson, Mo.....	1
Cashion, Okla.....	1	Leavenworth, Kans.....	7
Cedar Vale, Kans.....	1	Lexington Junction, Mo.....	1
Chanute, Kans.....	1	Lindsay, Okla.....	1
Cherokee, Okla.....	1	Lorenzo, Ill.....	1
Cherryvale, Okla.....	1	Lorraine, Kans.....	1
Chicago, Ill.....	30	Lyons, Kans.....	2
Chicopee, Kans.....	2	Mazon, Ill.....	1
Chillicothe, Ill.....	1	McCook, Ill.....	3
Coal City, Ill.....	2	McPherson, Kans.....	3
Coffeyville, Kans.....	2	Medford, Okla.....	1
Colorado Springs, Colo.....	5	Medill, Mo.....	1
Concordia, Kans.....	3	Meriden, Kans.....	1
Congo, Mo.....	1	Milldale, Ill.....	1
Corwith, Ill.....	5	Minneapolis, Kans.....	1
Crandall, Ill.....	1	Minonk, Ill.....	1
Deming, N. Mex.....	2	Morton, Ill.....	1
Denver, Colo.....	9	Nemo, Ill.....	1
Dewey, Okla.....	1	Nepesta, Colo.....	1
Dodge City, Kans.....	1	Nerska, Ill.....	1
Drummond, Ill.....	1	Newton, Kans.....	1
E. Galesburg, Ill.....	1	Nickerson, Kans.....	1
El Moro, Colo.....	1	Niotaze, Kans.....	1
El Paso, Tex.....	7	North Topeka, Kans.....	2
Emporia, Kans.....	1	Oklahoma City, Okla.....	3
Enid, Okla.....	2	Olathe, Kans.....	2
Enterprise, Kans.....	2	Osage City, Kans.....	1
Erie, Kans.....	1	Ottawa, Kans.....	1
Eton, Mo.....	1	Palmer Lake, Colo.....	1
Eureka, Ill.....	1	Pauls Valley, Okla.....	1
Eureka, Kans.....	1	Pekin, Ill.....	5
Fort Madison, Iowa.....	1	Pequot, Ill.....	1
Fredonia, Kans.....	2	Perry, Okla.....	1

Junction points on Atchison system—Continued.

Station.	Number of roads.	Station.	Number of roads.
Atchison proper—Continued.		The Gulf, Colorado, and Santa Fe Railway Company—Continued.	
Pittsburg, Kans.	3	Gainesville, Tex.	1
Plaines, Ill.	1	Galveston, Tex.	10
Plattsburg, Mo.	2	Honey Grove, Tex.	1
Portland, Colo.	1	Houston, Tex.	10
Preston, N. Mex.	1	Kountze, Tex.	1
Princeville, Ill.	1	Lampasas, Tex.	1
Pueblo, Colo.	5	McGregor, Tex.	1
Purcell, Okla.	2	Milano, Tex.	1
Quenemo, Kans.	1	Morgan, Tex.	1
St. Joseph, Mo.	5	Navasota, Tex.	2
Salina, Kans.	3	North Fort Worth, Tex.	3
San Antonio, N. Mex.	1	Paris, Tex.	3
Santa Fe, N. Mex.	1	Pauls Valley, Okla.	1
Scott City, Kans.	1	Purcell, Okla.	2
Severy, Kans.	1	Rosenberg, Tex.	1
Sheffield, Mo.	4	Saginaw, Tex.	1
Shawnee, Okla.	1	Sealy, Tex.	1
Soldiers' Home, Kans.	1	Sherman, Tex.	5
South Haven, Kans.	1	Temple, Tex.	1
Sparks, Okla.	1	Virginia Point, Tex.	2
Stafford, Kans.	1	Wallis, Tex.	1
State Line, Texas.	1	Weatherford, Tex.	2
Sterling, Kans.	1	Wharton, Tex.	1
Streator, Ill.	4	Wolfe City, Tex.	1
Sugar Creek, Mo.	1	Wylie, Tex.	1
Superior, Nebr.	3	The Texas and Gulf Railway Company:	
Toluca, Ill.	1	Longview, Tex.	2
Topeka, Kans.	2	Timpson, Tex.	2
Trinidad, Colo.	4	The Atchison, Topeka and Santa Fe	
Tulsa, Okla.	3	Coast Lines:	
Valley Falls, Kans.	1	Albuquerque, N. Mex.	1
Wellington, Kans.	1	Ambrose, Cal.	1
Wichita, Kans.	4	Antioch, Cal.	1
Winfield, Kans.	2	Ash Fork, Ariz.	1
The Southern Kansas Railway Com-		Bay Point, Cal.	2
pany of Texas:		Calwa, Cal.	1
Amarillo, Tex.	3	Colton, Cal.	2
State Line, Oklahoma-Texas.	1	Daggett, Cal.	2
Washburn, Tex.	1	Diamond, Cal.	1
Yarnall, Tex.	1	Flagstaff, Ariz.	1
The Pecos and Northern Texas Rail-		Fresno, Cal.	1
way Company:		Hobart, Cal.	1
State Line, New Mexico-Texas.	1	Hooper, Cal.	1
The Eastern Railway Company of New		Inglewood, Cal.	1
Mexico:		Isleta, N. Mex.	1
State line, New Mexico-Texas.	1	Kern Junction, Cal.	2
The Pecos River Railroad Company:		Los Angeles, Cal.	3
Pecos, Tex.	1	Los Nietos, Cal.	1
The Gulf, Colorado and Santa Fe Rail-		Ludlow, Cal.	2
way Company:		Maltby, Cal.	1
Algoa, Tex.	1	Merced, Cal.	1
Alvarado, Tex.	1	Morena, Cal.	1
Arcola, Tex.	1	Nadeau Park.	1
Ardmore, Okla.	2	National City, Cal.	1
Bay City, Tex.	2	Mojave, Cal.	1
Beaumont, Tex.	5	Oakdale, Cal.	1
Belton, Tex.	1	Oakland, Cal.	1
Bessmay, Tex.	1	Redondo, Cal.	1
Bird's Siding, Tex.	1	Richmond, Cal.	2
Bobbin, Tex.	1	Raymond, Cal.	1
Brenham, Tex.	1	Riverside, Cal.	1
Brownwood, Tex.	1	San Bernardino, Cal.	1
Buna, Tex.	1	San Diego, Cal.	6
Cameron, Tex.	1	San Francisco, Cal.	4
Celeste, Tex.	1	San Pablo, Cal.	1
Cleburne, Tex.	2	Santa Ana, Cal.	2
Conroe, Tex.	1	Stockton, Cal.	3
Cleveland, Tex.	1	Thoreau, N. Mex.	1
Cravens, La.	1	Williams, Ariz.	1
Cresson, Tex.	1	The Santa Fe, Prescott and Phoenix	
Dallas, Tex.	8	Railroad:	
Davis, La.	1	Congress Junction, Ariz.	1
De Ridder, La.	2	Phoenix, Ariz.	12
Duke, Tex.	1		
Eagle Lake, Tex.	2		
Farmeraville, Tex.	1		
Fort Worth, Tex.	10	Grand total.	469

I have read Mr. Cowan's special explanation of exchange of car features of the Culberson bill. It ought to convince the Senate committee that the purpose of the bill is to create for the live-stock interests an easy method of making good any losses in the general handling of a live-stock business by fixing upon railways penalties, duties, and responsibilities that are inconsistent on the one hand and impossible on the other. The framers of the bill undoubtedly had that particular feature in mind, and its supporters have industriously omitted all reference to any matter outside of overdrawn advantages hoped for if the bill becomes law.

Under the operation and influence of a "pooling of equipment regulation," which has been tried for about two years and which embraced the main points outlined in this bill, conditions almost intolerable were brought about and will be reproduced whenever this bill or any other like it becomes a law. A man engaged in the cattle business and the practice of law may know just what remedies should be applied to overcome imperfect operation of railroad regulations, but in this case it doesn't stand out as clearly as the star which guided the wise men of the East.

I feel entirely safe in saying that during the period above referred to more congestion, more delay, and more harmful use of cars occurred, so far as the whole commerce is concerned, than ever before in the history of American railroads. Cars were sent everywhere to destination, regardless of distance or cost. The per diem rental upon the so-called reciprocal arrangement of exchanging cars was so high that it operated as a penalty upon roads, in some cases so severe that they could not live under it. The lines making final delivery of freight found themselves almost wholly deprived of their own equipment and their facilities crowded with commerce loaded in foreign cars which they could neither dispose of or use.

Long railroads suffered particularly; roads having peculiar gradients, and sparsely settled territory especially felt the burden. So-called demurrage rules were in many instances undoubtedly made use of by shippers as being the cheapest way to provide storage at destination. The charge, amounting to less than 5 cents per ton for the tonnage capacity used, had little or no influence because it was cheaper than moving the load.

The whole experiment was so unsatisfactory to the public and the railroads that a return to more rational methods has been in process for some months past.

These items are referred to because in the arguments favoring this bill reference is continually made to the fact that the Interstate Commerce Commission is to be charged with making the rules which are to make the law effective. That body will probably be able to find reasonable employment for its time in carrying into effect the instructions it has secured from Congress, without undertaking to provide regulations for the detail of handling 2,000,000 car units in a way that will satisfy the general public. The bill, of course, seeks to make the regulations easy to draw, by reason of first providing that my property is not mine, but belongs to the public at large and must be sent abroad regardless of any interest in it, or need of it for use under my own control.

The basis upon which this proposed action rests has not been made clear by the advocates of the bill. If the Congress will change

the damage and attorney-fee section, making it operate against the users of cars as well as the railroad, we would not object particularly to its enactment. In 1884 Texas enacted such a law. Under its provisions the railroad is required to provide equipment under penalty of \$25 per day for failure, and the public is penalized in the same amount for each car ordered and not used, or when it failed to use all the capacity ordered, or failed to unload within a prescribed time. It is not of record that any of the advocates of this bill took advantage of the provisions of that law; especially is it true that Mr. Cowan and his clients have not found during the twenty-odd years it has been on the statute books that their interests were being sufficiently injured as to require the prosecution of any considerable number of suits.

When it is considered that a major part of the business which it represents originates in that State, it may be thought singular that with a law so amply providing for its protection lying practically dormant for over twenty years, a need suddenly arises for Federal legislation which places obligations and fixes penalties and damages and attorneys' fees upon the carrier only. There is about the same need of the proposed laws as there is for a general attack of the headache. The idea of making a railroad responsible for failure to supply cars, and at the same time take away from it the means of supplying them, is so preposterous that it would be humorous but for the fact that a committee of our highest law-making body has been asked by an infinitesimal proportion of the interests affected to seriously consider ways and means by which this thing can be made lawful on the one side and unlawful on the other.

The advocates of this bill announce with a great show of unction that they do not want to manage the railroads; all they want is to prescribe the rules and the measure of damage and attorneys' fees, and they don't care who manages them, and that is the meat of the whole thing—they may have freight and order cars, or order cars without having freight, and the results will be substantially the same—i. e., the railroad stands the damage, in one case by failing to supply the cars and in the others by the expense of supplying cars that are not used. I can assure you the latter is not an inconsequential item in the course of a year.

Again, as pointed out once before, the usual practice is to concentrate movements of live stock and other freight into a period so short that no matter what the ability of the railroad may be, it will still be without means of meeting the demand made upon it and incur risk of penalties, damage, etc., provided for in this bill.

It is very evident the provisions of the bill in respect to average speed which it provides shall be maintained has not had consideration of any consequence. The advocates of that feature of the bill have proposed that an average speed be maintained. I assume the average speed contemplated is that obtained by dividing the number of hours between the loading point and destination, into the distance. It is most apparent to anyone familiar with the handling of trains that the figures submitted have omitted all reference to the necessary stops for changes of engines and train crews, orders, water, coal, and meeting points.

If I may illustrate what I have in mind, by taking the movement of a stock train from Kansas City to Chicago, I shall be compelled, in

order to show the average speed of 20 miles per hour, to make more than 35 miles per hour, which is a speed faster than most passenger trains are scheduled, in order to overcome delays incident to the stops necessary in changing engines, taking coal, water, obtaining orders, and meeting and passing passenger trains.

I have noticed that the figures which have been submitted to the committee set up the claim that the average movement is but 9 miles per hour. An investigation of the movements which produced that result would most likely show a very heavy percentage of branch line freight trains handling but few cars of stock, and of main line trains picking up live stock en route. I apprehend that if the figures could be actually stated the movement of stock would show a figure above 15 miles per hour while running instead of 9, as shown by the general compilation of figures which must include the mileage of all kinds of train carrying live stock.

I contend that any law which fixes the speed limit from one terminal to another will be a most dangerous regulation.

It may not be amiss to mention, in closing, that in the State of Texas a movement of citizens is now being carried on, having for its object the repeal of a large number of obnoxious laws which have been made and are now seriously crippling the material prosperity of that State.

STATEMENT OF OFFICERS OF THE CENTRAL OF GEORGIA RAILWAY COMPANY OF OBJECTIONS TO H. R. 4007 AND 13841.

GENERAL.

[By Second Vice-President W. A. Winburn, in charge of traffic.]

The legislation is predicated upon the theory that the railroads are willfully refusing to provide enough suitable cars to handle their traffic and are not moving it as rapidly as they can and should do. This bill would not constitute a wise and conservative law and should not be passed, because it represents the hostile views of only one class of shippers and is based upon their experience during an unprecedented congestion of freight traffic. It proposes to exact double damage for failure to furnish cars promptly for live stock and discriminates unjustly against other classes of perishable freight.

The underlying principle of the whole scheme is false, because it undertakes to fix arbitrary rules for the transportation of freight regardless of the fluctuations in the volume of traffic or the physical conditions affecting the transportation service.

During the past three or four years the railroads in the United States have handled a larger business than was offered during any previous period of prosperity. It has exceeded their most extreme expectations, and enormous expenditures have been made in laying additional main lines, side tracks, and terminal yards and in building cars and engines to keep pace with the requirements of the business of the country. To-day most of them are paying interest on facilities that are idle and that are likely to remain so. If it were true that they had made no effort to meet the growing demands of commerce, it would be fair to impose penalties that would impress this duty upon them; but it is true, and should not be difficult to prove,

that they performed their duty to the shipping public faithfully. They have spent all the funds that they could raise for the enlargement of their facilities and can not be subjected to punitive legislation with any better show of justice than the manufacturers or miners for failure to supply the requirements of their customers.

SPEED AT WHICH TRAFFIC SHALL BE CARRIED.

It would be impracticable for the Commission to prescribe the minimum rate of speed for each class of traffic and over each road. To do so it would have to consider the character of each road performing the service, as well as the circumstances and conditions under which it is to be transported.

FURNISHING CARS AND EXCHANGE THEREOF.

So far as the terms and conditions that affect interchange and use of cars by the carriers are concerned, there is now a well-established and generally satisfactory basis, and no legislation would appear to be necessary on that point. It does not seem reasonable to me to require one road to deliver another 100 empty cars to be used in any traffic that may suit the interest of the receiving road simply because it has turned over to the other 100 carloads of freight, which it has undertaken to transport from choice or necessity and finds it to its interest to turn over to some particular connection. There are two objections to such a method—the road receiving the loads may not desire the traffic nor feel that it was to its interest to promote the movement by exchanging an empty for a load; or there might be traffic offering on its own line that it desired to handle, or was required by law to handle, which would have to be neglected if it was required to turn over its equipment to its connections to take care of business originating on other lines.

[By General Manager T. S. Möise, in charge of operation.]

In the case of exchange of equipment serious complications would follow a regulation of this kind that would not only place an intermediate nonoriginating line in a position by which it could be required to furnish in times of great prosperity an empty for every loaded car received, but often special equipment, especially suited only for a character of business that it did not originate, which would be idle in periods of adversity when the originating or gathering road would naturally desire to use its own cars.

It would also be a great disadvantage to the short lines receiving loads destined to near-by points to have to furnish empties to the delivering line that could be used to distant points in which the owner of the car would have no traffic interest, and in this way it would take but a short while to drain the smaller carriers of all of their equipment.

RECIPROCAL DEMURRAGE.

With regard to the so-called reciprocal demurrage rule: There is a vast difference between a railroad charging demurrage for the use of a car, the consignor or consignee having the usual free time for holidays, bad weather, etc., and penalizing a railroad for failure to fur-

nish facilities which it is not only anxious but exercising its best efforts and all of its means to do, with no such grace as given the consignor or consignee, and prohibited in many States by law from operating its trains on Sundays, a serious burden in itself, representing a loss of time and equipment of about 14 per cent.

STATEMENT OF MR. JOEL F. VAILE, OF THE DENVER AND RIO GRANDE RAILROAD SYSTEM, IN REGARD TO H. R. 4007 AND 13841.

With the great variety of conditions which exist in different parts of the country and on different railroad lines, we are already experiencing serious difficulties which arise from the attempt by legislative means to control the details of railroad management. Under ordinary conditions it would seem that the interest of railroad companies to supply cars to the extent of their ability to meet the demands of traffic would furnish a sufficient incentive to avoid serious difficulty as between the railroad company and its customers. But in this country, as shown by recent experience, conditions change so rapidly that it is impracticable for railroad companies as quickly to respond to the changed conditions. It is only a short time ago that the demand for cars for the movement of all sorts of traffic very far exceeded the possibility of railroad companies over the country to comply at once with the apparent necessities of the situation. The manufacturers of equipment were flooded with orders beyond their capacity to turn out product. A sudden change has come in the condition of business affairs, and the supply of equipment seems for the moment to be fully equal to all necessities of commerce, and there are many orders for equipment now in process of fulfillment, which orders were made in view of the immense pressure for additional cars which existed some weeks ago, but which necessity again has been suddenly removed.

I do not see how legislation can provide a remedy for these sudden fluctuations of conditions.

The Denver and Rio Grande Railroad Company has lines ramifying through different sections of the Rocky Mountains and in valleys here and there, and the demand which comes in the fall of the year in normal times for a large number of cars to move live stock from mountain ranges is a demand which comes almost simultaneously from many sources. A railroad company must adapt itself to such demand, but in the emergency of numerous demands from different directions on outlying branches, it must necessarily distribute on some fair basis its cars as it may be able to do so, with a desire to accommodate all without undue discrimination. Its inability in given cases to meet the momentary demand would under such a law as the Culberson bill subject it to penalties which are entirely unnecessary to induce its most active efforts, and yet the exaction of which tend to diminish its power to perform. The situation of a railroad such as ours, with these ramifications necessitated by topography and where the location of branches is determined by the existence of natural resources at particular points, and not by the ordinary commercial principles which cause a trunk line to be constructed from one main center to another, is very different from that of a

trunk line running from commercial point to commercial point and serving a farming section en route.

In the bill as proposed we can hardly see the justice of the requirement that a company receiving loaded cars from a connecting carrier shall furnish such connecting carrier with empty cars. There may at the time be an imperative demand upon the company's own line for all empty cars that it can supply, and there surely should be no rule which would require that as a consideration for receiving loads from a connecting carrier it should furnish that connecting carrier with a corresponding number of empties. In the ordinary interchange of business this matter would seem to be sufficiently satisfied by the ordinary usage among railroads involving reciprocity in the furnishing of traffic, and therefore loaded cars between the connecting lines and leaving the supply of empties to the natural operations of interchanged business.

It seems to me that the proposed bill in any event is one which will be practically difficult of enforcement, although capable of making a great deal of trouble. I would suggest that there are some things which railroad companies should be permitted to do for themselves and that on some portions of their business they should be allowed some latitude of discretion, and that legislation such as is here proposed is of a character calculated to destroy efficient transportation service.

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HEARINGS

BEFORE THE COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE OF THE
U. S. HOUSE OF REPRESENTATIVES

ON THE BILLS
RELATING TO

RAILROAD RATES, CAR SUPPLY
AND TRAIN SERVICE

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Friday, April 10, 1908.

Committee called to order at 10.30 a. m., Hon. James R. Mann in the chair.

DETERMINATION OF RAILROAD RATES BY THE INTERSTATE COMMERCE COMMISSION.

Mr. MANN. You may proceed, Senator Faulkner.

STATEMENT OF HON. CHARLES J. FAULKNER, OF WASHINGTON, D. C.

Mr. FAULKNER. Mr. Chairman, I will seek to be brief in the remarks that I shall submit to the committee in reference to several bills that have been passed over, and to which I now desire to request the attention of the committee. They are H. R. 7568, introduced by Mr. Townsend; H. R. 7656, by Mr. Williams; H. R. 11354, by Mr. Hardy; H. R. 14038, by Mr. Bowers, and H. R. 15855, introduced by Mr. Watkins. In all of these bills the principle is in substance the same. They apply to the question of an increase of a rate, and provide that any party who has the right, under the thirteenth section of the act to regulate commerce, to file a protest, with the provision that the rate shall be suspended and not take effect until the Commission shall have passed upon the reasonableness of the advance after a hearing by the Commission, and the decision shall determine that the advance was just and reasonable.

There are numerous objections to the principle embodied in these bills: First, it changes the whole theory upon which the present existing act to regulate commerce rests. The existing law leaves to the carrier the initiation of rates and requires a complaint and hearing to set aside a rate. These bills if enacted into law would practically turn over to the Commission the control and initiation of the rates of this country. We assert that such would be the effect of these provisions, for the reason that it would not be the consideration of the reasonableness of a rate in existence, the effect of which could be shown, but a question before the Commission of the advisability, the propriety, or the reasonableness of the advance in the rate; and as rates are continually changing, either being lowering or being increasing, to the number of 600 and 700 a day, you can see that in the course of a very short time, if protests were filed, the Commission would have made the rates which under existing law could not be modified or changed by the carriers under the orders of the Commission.

The second objection that I urge to these bills is that the provision requiring thirty days' notice before a rate can take effect was to give more stability to rates than under the original law to regulate commerce and to place all shippers by such notice on an equality in making contracts, as they could then know the rates to be in effect when the contract was to be performed. Under the former law the

notice to increase a rate was ten days, and to lowering a rate three days. The enactment into law of the principle of these bills would render the purpose of the amendment of the Hepburn Act useless as to the thirty-day provision. Anyone could file a protest within the thirty days which would effectually stop the going into effect of the rate and leave the question indefinite and uncertain as to when, if ever, the proposed advance would take effect.

MR. MANN. Could not that easily be corrected by providing that the rate should not take effect until thirty days after the decision of the Commission?

MR. FAULKNER. No; as I will show you by the third proposition I shall submit.

MR. TOWNSEND. Before you get to that, you can imagine, even as a railroad man, that a proposed rate might be declared, and practically would be declared, unjust and unreasonable, can you not?

MR. FAULKNER. Yes.

MR. TOWNSEND. That rate can not be attacked until after it has gone into effect under existing law, can it?

MR. FAULKNER. I do not think you are correct in saying that it can not be attacked. I think it can be attacked any time after it is filed.

MR. TOWNSEND. By whom?

MR. FAULKNER. By whoever would be affected by the rate, or have the right to attack it under the thirteenth section.

MR. TOWNSEND. The Commission has held that it could not be attacked. From the talks that I have had with them, they maintain that they have no jurisdiction——

MR. FAULKNER. They have no power to decide the question within the thirty days, but the protest, however, could be filed, although it would not suspend the rate.

MR. TOWNSEND. But it would not effect anything.

MR. FAULKNER. Not until the decision was rendered.

MR. STEVENS. Courts have suspended a rate.

MR. FAULKNER. Yes; the court can suspend the taking effect of a rate.

MR. TOWNSEND. I am not talking about a rate in force, but a proposed rate. In justice to all parties, ought there not to be some arrangement or provision provided by Congress whereby a rate could be determined as to its justness or reasonableness from the time of the notice of the proposed increase?

MR. FAULKNER. I think not, and for reasons which I will proceed to give you.

MR. TOWNSEND. I agree with you that it would mean a great burden upon the Commission if it had to entertain complaints on all proposed changes, but ought there not to be some discretion with the Commission so that if prima facie the proof shows a rate to be unjust and unreasonable it could be suspended until determined?

MR. FAULKNER. In answer to that question I would say that anyone could make a prima facie case in an ex parte petition. The Commission would not have the time to investigate the matter within the limit of the thirty days to determine whether it was advisable and proper to suspend the rate or not, and I will further show to the committee the danger to fair and legitimate business such a law would

suggest to a dishonest shipper. For example, suppose a shipper was bidding on a contract for furnishing a large amount of material in competition with another, or a half dozen others, and notice was given of an advance in the rate affecting that material, either one of those competitors could—the others anticipating that the rate would go into effect—base his bid upon the old rate and not on the advanced rate that would take effect when the contract was to be performed.

Mr. TOWNSEND. But supposing a man had a contract existing for six months instead of thirty days?

Mr. FAULKNER. Just wait one moment. What would be the result? Anyone of those competitors could file his protest within the thirty days; he would make a *prima facie* case, and the Commission would be compelled, as it has had no opportunity to investigate, to suspend the going into effect of that proposed increased rate. This competitor made his bid based upon the fact that he would have the benefit of the low rate, which would give him the advantage over his competitors, which would be equivalent to the law itself conferring upon him a rebate, an inequality, which it is the chief purpose of the law to prohibit, as between the shippers of the country. This could be done without the least difficulty by a dishonest shipper.

Mr. STEVENS. It is open to everybody.

Mr. TOWNSEND. But I can not see the force of that.

Mr. MANN. To give another illustration that may help you upon that point: The law now provides that municipal corporations may receive lower rates of freight, and very serious complaints, bitter complaints, are being made now by some people that there are people engaged in the manufacture of water pipe and other iron articles who make arrangements with the railroad companies under which certain municipal corporations, for their benefit, are notified that they can get a lower freight rate. Of course, that is not open to everybody, but it has had the effect of very largely changing contracts with reference to water pipe in the last few months.

Mr. FAULKNER. I was not aware of that fact. Mr. Townsend, I do not see why you do not appreciate how easily a competitor could take advantage of such a law to the disadvantage of his competitors.

Mr. STEVENS. Why can not the competitor take advantage of it?

Mr. FAULKNER. Because the other competitors are acting in good faith. They do not feel that the advanced rate is an unreasonable rate, and therefore they put in no protest. The other competitor does not regard the advanced rate as unreasonable, but he is scheming for the purpose of an advantage over his competitors, and he waits until near the end of the thirty days, then puts in his protest, files his bid based upon the old rates, and secures the advantage over his competitors.

Mr. TOWNSEND. Then he must be pretty well convinced, if he is going to take that advantage, that the rate is unjust and unreasonable.

Mr. FAULKNER. Not at all, because if he makes a *prima facie* case it is suspended by law or, under your suggested modification, by the Commission. When the hearing is had the Commission may sustain the advance; the dishonest competitor has then shipped his goods under the lower rate, his competitors, who bid under the proposed advance in the rate, having failed to secure the contract.

Mr. ESCH. Do you think that would result in discrimination?

Mr. FAULKNER. Not only would it be a discrimination, but to the extent of the difference between the rates it would be equivalent to a rebate, and it would encourage a dishonest competitor to seek to accomplish an advantage that the law has prohibited since 1887.

Mr. RICHARDSON. The great trouble about this is that it would take the Interstate Commerce Commission more than thirty days to investigate the matter, and the whole thing would be held up?

Mr. FAULKNER. It would be impossible for the Interstate Commerce Commission, under such a law, to make any investigation of the facts.

Mr. RICHARDSON. I understand that, but I am going further. That being the case, wouldn't it be wise to insert into the law authority for the Interstate Commerce Commission to say whether they would make these investigations or not? They might have an opinion already fixed that the rate was too high, and they could avoid the delay.

Mr. FAULKNER. If you should give them the discretion, and they have not the time or opportunity to investigate the facts on a prima facie case, as public officials they would be compelled to suspend the going into effect of the rate until they had made such an investigation; otherwise would they not fail to do their duty?

Mr. RICHARDSON. I do not think that necessarily follows. The Commission might say that this case, upon its face, showed that it was not worthy of investigation. They could hold that, after some experience and observation upon that line of rates, they would not raise it.

Mr. FAULKNER. If they were possessed of the facts that bore upon the rate and were satisfied it was a proper advance, of course they would, having the discretion, not suspend the rate; but in nine out of ten cases the advances would be such that the Commission would have no knowledge of the facts that would show whether the rate was reasonable or unreasonable. When you consider that the rates in this country are changed, lowered or raised, to the number of six to seven hundred a day, you will appreciate the absolute impossibility of getting a hearing of the protest by the Commission, or a consideration of the facts that would justify a temporary order as to the advance.

Mr. RICHARDSON. You do not contend that if this suggestion was enacted into law, and that the Commission was required to look into any rate supposed to be advanced by a common carrier within thirty days, or at any time, that it would have the effect of preventing a railroad thereafter from ever lowering a rate again?

Mr. FAULKNER. I will endeavor to show you that that has been the effect wherever it has been adopted.

Mr. TOWNSEND. Right there. I have been looking up some of the rates that the railroads have been increasing, rates that have been in existence, some of them, twelve or fifteen years, and which have suddenly been changed. Do you think that there would be any great loss to the railroads if such a rate were to be continued under an order of the Commission for a few days longer until the matter of its reasonableness could be determined?

Mr. FAULKNER. You limit that by several qualifications. You say "a few days." In the first place, I think it would take more than a few months to decide a case of that character.

Mr. TOWNSEND. But they have been determined pretty rapidly for the last year?

Mr. FAULKNER. Yes, they do determine them as rapidly as they can, and they have improved greatly in that respect.

Mr. KENNEDY. Would it not be a fair presumption that a rate which had been in existence for the railroad company was a reasonable rate, and would it not also be fair to permit it to continue until the railroad makes a showing to the Commission?

Mr. FAULKNER. I hope to show that under the decisions of the Supreme Court that there is no presumption because a rate is advanced that it is unreasonable. The conditions change in regard to the traffic, and its reasonableness must depend upon the conditions when the advance is made.

Mr. KENNEDY. These bills seem to bring the question before us as to which, the shipper or the railroad company, ought to have the burden of effecting this change, or defeating it.

Mr. FAULKNER. I do not think that is the important question here, because I think the burden has always been thrown by the Commission on the railroad company with respect to the increase of a rate.

Mr. ADAMSON. The railroad takes the initiative and fixes a rate, and it runs on one, two, three, five, ten, or fifteen years. All at once it comes to the conclusion that in fixing it it was not high enough, and, as I understand the question of Mr. Kennedy, it was to the effect that it was originally fixed as high as the traffic would bear, and now they want to make it higher. Ought not the burden to be upon the railroad company when the Commission has such a case up for decision?

Mr. FAULKNER. Does not the Commission throw the burden on the railroad company to-day? The question of the burden of proof is not the important question here.

Mr. TOWNSEND. What difference is there in the principle under existing law and the one which we propose to put in this bill? Under the existing law the shipper has a right to complain when the rate is in force. We propose now to give him the right to complain when the proposed change is advertised. Under the proposed law we say that the Commission "shall have the power," and I propose to amend it to the effect that it "shall have the discretion" until reasonableness has been determined. Under existing law, as the Commission has ruled, if the rate is found unjust and unreasonable, it can order reparation from the company to the shipper for the amount, and so I ask you now what is the difference in principle?

Mr. FAULKNER. I am afraid, Mr. Townsend, that you are looking at this question from one side. I appeal to you to look at it from both sides.

Mr. TOWNSEND. I certainly want to do that.

Mr. FAULKNER. Take the illustration that you have given. If the rate goes into operation as you suggest, under existing law, and a protest is made as to that rate being an unreasonable one, the rights of the shipper are fully protected under existing law. How? If the Commission decides that it is an unreasonable advance, it proceeds a step further and ascertains the damage to the shipper and grants him reparation.

Mr. TOWNSEND. But can the Commission make reparation? For instance, if the lumber manufacturers of the West are correct in their contention that the raise in the rate of 25 per cent was unjust and unjustifiable, can the Commission, by returning to the shipper that extra amount of freight that was overcharged, repair them for the actual damages sustained by them in the shutting down of their mills?

Mr. FAULKNER. That is a question that involves the further fact as to whether that rate did shut down the mills, whether it even tended to reduce the amount of production, all of which must be decided before we can decide it.

Mr. ESCH. I guess there is no question but that it shut down the mills and stopped the transportation.

Mr. FAULKNER. I think that this question of the advance of rates shutting down those mills is an open question. It is a question whether the falling off of the consumption has not aided in shutting the mills down, whether the prostration in the lumber business and the general depression of business—whether, in fact, each and all of these causes have not had the tendency to curtail production and to shut the mills down.

Mr. HUBBARD. What has been the effect in regions where there has been no increase of rate? How have the mills there been affected?

Mr. FAULKNER. I have not heard of any complaints excepting those from the Pacific coast.

Mr. HUBBARD. But what about the regions where there has been no increase in rate? Has there been a corresponding falling off corresponding to the regions that have been affected by the increase in the rates?

Mr. FAULKNER. I can not say whether there has been or not, but in my own State there has been a large falling off of production.

Mr. STEVENS. As to the lumber rate, it has been a question of the western mills maintaining their own schedule of prices, because where formerly the market in Montana, North Dakota, and northern Minnesota had been filled by the Northwestern lumber, now those markets are filled by the hard-pine lumber from the South, because the lumber manufacturers of the last-named region had cut prices. It was not a question of railroad rates at all, but a question of lumber rates.

Mr. FAULKNER. That is a very good answer. I desire to give you an illustration of what occurred under my own personal observation. Last year I had a roof put on one of the barns on my farm in the valley of Virginia. I rode out there one day, looked at the roof, and was struck by the color of the shingles. The foreman informed me that they were redwood shingles from the Pacific coast. I replied: "You do not mean to say that you put on redwood shingles when we have white-oak shingles here in West Virginia?" He answered, "Senator, the redwood is the best shingle that we can get, and it can be bought for 75 cents a thousand less than West Virginia shingles." If those shingles can be brought from Washington and Oregon to the valley of Virginia in competition with the white-oak shingle of the valley, I can not understand how the rate for their transportation can be considered an extortionate rate.

Mr. KENNEDY. White oak has come to be very nearly as valuable a wood as mahogany?

Mr. FAULKNER. It is valuable because it is going now so largely into car construction.

Mr. TOWNSEND. I did not care to enter into a discussion of the reductions or increases in rates or the reasons for them, because it may be said according to varying judgments that they are due to this, that, or the other thing. But assuming that their contention is correct, as I have maintained, that the rate has been changed, and the effect of it has been to ruin the business of these mills, you can not, by paying back the difference in rate, make full reparation for their loss.

Mr. FAULKNER. Now, take the other side of the case. They can get reparation. Every man by addressing a letter to the Commission, becomes a party to that suit; that is all he has to do.

Mr. KENNEDY. But no one would have an actionable status to bring that case up until after the rate had gone into operation. Upon the publication of the mere intent to raise the rate he would have no status at all.

Mr. FAULKNER. He would have no status that would entitle him to a decision of the question within the thirty days.

Mr. KENNEDY. And he could not raise the question in any court.

Mr. FAULKNER. Yes; shippers have raised the question in the courts and secured temporary injunctions.

Mr. HUBBARD. Would those whom you represent have any objection to permitting the shipper to apply to the Commission as soon as the increase in rate is announced, without waiting until it goes into effect? Have you any objection to that feature?

Mr. FAULKNER. No, none in the world; if it does not suspend the rate. I want to suggest to Mr. Townsend the other side of this question. The shipper can get reparation—every shipper who is injured—by filing a protest if the rate is an extortionate one that is advanced, and can be protected. But if you allow this suspension of the rate at the discretion of the Commission, and they subsequently decide that the rate was properly advanced, there is no possibility of the carrier obtaining any reparation.

Mr. RICHARDSON. Yes; that is the unavoidable dilemma that you get into.

Mr. FAULKNER. It is unavoidable only because of the statute. Why is it necessary, therefore, to impose such a burden upon the carriers of the country, when by your law, as it exists to-day, the shipper is fully protected in the matter.

Mr. RICHARDSON. What remedy would you suggest to protect the railroad?

Mr. FAULKNER. There is no remedy that I can suggest, or, I believe, any other person, if you suspend the rate. The only redress possible is the one you have given to the shipper in case that rate is declared unreasonable, to allow reparation to him, and thus pay him back in damages every dollar that was unlawfully taken from him.

Mr. RICHARDSON. I think a remedy has been suggested in Alabama that the railroad shall give a bond.

Mr. FAULKNER. That was through the courts, I think, and not by legislation.

Mr. RICHARDSON. But it illustrates the same thing. What remedy would a man have in collecting a rate?

Mr. FAULKNER. The law allows a shipper by writing a letter to the Commission to protest against an advance of rate, that it is an unrea-

sonable rate; the Commission decides the question and orders the railroad, if it finds the rate unreasonable, to pay him what has been unlawfully collected.

Mr. RICHARDSON. That is based upon this, that the people have conferred that authority, and they are the ones to be benefited if anybody, not the creature they made, but the people who created the authority, who originated it.

Mr. FAULKNER. I think, Mr. Richardson, that you are too fair-minded a man, you always have been on all these questions, to hold that because a power has been granted for the benefit of the public, authorizing a corporation to construct a railroad (for we must remember that this grant should never be made unless in the judgment of the sovereignty it is for the public benefit)——

Mr. RICHARDSON. I contend that there is something due the grantor or they would not impose unjust conditions upon the grantee. I think there is more due the grantor, the public, than the creature created by the grantor.

Mr. FAULKNER. I believe it can be maintained successfully and the statement will be approved by every traffic official as a correct proposition, that there is not one rate out of ten that is arbitrarily fixed by the traffic officials of a railroad. Rates are evolved out of circumstances and conditions surrounding the traffic. I believe that it is conditions which control traffic officials in fixing rates.

Mr. ADAMSON. They would control every act a man performs in every relation of life under those circumstances.

Mr. FAULKNER. Not to that extent; I maintain that in fixing rates no traffic man will assume the full responsibility——

Mr. ESCH. In 1901, when some 500 schedules were practically changed in a night, was that the result of evolution?

Mr. FAULKNER. I can not say. I am speaking of the general rule in making rates. Of the classifications that you speak of, Mr. Esch, I haven't any doubt that it was based upon some sound reason, but what it was I am not able to state, not being a traffic man and not being familiar with the particular incident that you speak of.

Mr. MANN. But isn't this largely a practical question, and that the railroad position is that if they can not raise the rates they are likely to lower them? Do you know how many tariff schedules were filed last year with the Interstate Commerce Commission?

Mr. FAULKNER. There were between 600 and 700 a day.

Mr. MANN. Two hundred and twenty-five thousand nine hundred and eighty-two tariff publications, all containing changes of rates and rules governing transportation, and about 400,000 notices of concurrence in tariffs. Of course, each one of those publications might contain a great number of different tariffs.

Mr. KENNEDY. Were they the first filings?

Mr. FAULKNER. Oh, no; they were changes in most of the cases.

Mr. MANN. That is about the average for a year's time. If the Interstate Commerce Commission is given discretionary power to keep any of these rates in force, and enjoin the putting into effect of any of these tariffs, and that they must act within thirty days after the tariff publications are filed with them, would not the necessary consequence be—you spoke of making out prima facie cases—that the Commission must act pro forma? Do you know of any court

in the land that is required to do anything in thirty days' time that does not act pro forma on that proposition?

Mr. FAULKNER. It could not examine into the facts, because it would not have the time to do so.

Mr. KENNEDY. Of all those rates filed, do you know how many were accepted?

Mr. FAULKNER. I do not know, of course a very small number, comparatively, were challenged. There is no inducement under existing law to the shippers to encourage him to file a protest unless he believes the rate unfair.

Mr. MANN. Is not the real question this: The railroad company has fixed a rate, and Congress would unquestionably consider that the railroad company, having fixed a rate, that that rate was fair to the railroad company and might properly remain in force if that were the end of it; but with all these changes in rates, would not the effect of a provision that no rate could be changed excepting with the permission of the Interstate Commerce Commission result in absolute freight rates in the United States? Are not nearly all of these rates changed at the request of the shippers, as a rule?

Mr. FAULKNER. To a great extent. A large number of the changes are made at the request of the shippers or communities or boards of trade, or other organizations.

Mr. TOWNSEND. Then the conclusion of the whole matter, according to Mr. Mann's question and your answer, would be that the Commission can not exercise any power over this matter at all that would be practical, and that the railroads can fix any rate they please?

Mr. FAULKNER. I do not agree with you in that conclusion. The power being vested in the Commission to determine the reasonableness of a rate and to fix a rate that is reasonable, no railroad official is going to arbitrarily make an extortionate rate.

Mr. TOWNSEND. If these 400,000 changes that have been suggested finally become the rates of the country, and they must be taken somewhere if they are unjust and unreasonable, this proposition is to give shippers the right at the earliest opportunity to do the same thing that the law confers upon them after it goes into effect. The rate could be determined after it goes into effect, whether it is to continue in the future or not.

Mr. FAULKNER. No; you do not furnish the inducement to the shipper to protest that you do under this bill. Here a shipper can get an unlawful and improper advantage of his competitor under the principle contained in this bill which he can not under the present statute.

Mr. TOWNSEND. I believe I am very dull, or else your argument is not good on that point, because it seems to me that all would have the same advantages that you speak of.

Mr. FAULKNER. Here are four men. Three of them are honest; three of them believe that the rate advanced is a fair and reasonable rate, the other believes the same, but he knows his competitors are bidding for a large contract, and he is able to take advantage——

Mr. MANN. You do not think that there is anything dishonest about four men bidding for a contract, and one asks for information which he wants, and uses the information——

Mr. FAULKNER. I think if he files a protest with the sole purpose of getting an advantage of his competitor, that it is a dishonest act.

These three men assume that the rate will go into effect at the end of thirty days; they believe that it is a proper rate, and they do not file a protest. This other shipper at the end of twenty-nine days files his protest, and that suspends the rate.

Mr. TOWNSEND. What are you going to do with the man who has made his contract under the existing rate, a rate that has been in effect for fifteen years, and then it is changed on him?

Mr. FAULKNER. On certain classes of commodities, where the contracts are made months in advance of delivery, the roads have usually made the rate to continue in effect for a period equal to the customs of the trade, as, for instance, the coal rate. The coal rate is made for a period of a year——

Mr. HUBBARD. And never changed?

Mr. FAULKNER. Not during that period, because that is the custom of the trade, and the sales are made based upon those rates for the year. That was the purpose of the provision that was inserted in the Hepburn bill allowing the Commission, when it fixed a rate, to prescribe the time it was to continue effective, not to exceed two years. This conformed with the practice that had obtained with the carriers. The statute empowered the Commission, when they determined a rate for the future, to fix the time within which that rate was not to be changed, with a view to this policy.

Mr. TOWNSEND. Do I understand you to say that all of these changes of proposed rates have been made by the railroad with the distinct understanding that they should not interfere with existing contracts?

Mr. FAULKNER. Oh, no; I did not say that.

Mr. STEVENS. I know a great many cases where the railroads have interfered.

Mr. TOWNSEND. They come to me by scores.

Mr. FAULKNER. The general policy of the road is to fix the rates to conform to certain usages of trade and to assure the shipper that for a certain time that rate shall exist—as illustrated by the coal rates.

Mr. HUBBARD. Would there be any objection to legislation that would compel the railroads to do that thing as to all commodities?

Mr. FAULKNER. I do not think there is any necessity for that character of legislation, for this reason: If there is an improper advance of rates, the Commission, on complaint, will decide and fix the future rate, and in its order will prescribe the period the rate shall remain in effect.

Mr. HUBBARD. And would not object to that sort of legislation?

Mr. FAULKNER. Well, I think I would regard it as inadvisable to do that when the Commission has the power to control that subject under existing law.

Mr. RICHARDSON. The only objection you have is to the suspension?

Mr. FAULKNER. Yes.

Mr. RICHARDSON. You referred to the thirty days' limit. Under the old law there was universal complaint of fraud, deception, and misrepresentation, giving favored parties an advantage, and all that. Then Congress put in the limitation of thirty days.

Mr. FAULKNER. There has been no complaint since then that I have heard of in reference to that subject; that is, want of proper notice to shippers. The thirty days gives to all full notice. We hear no discussion now of midnight tariffs. It was with the hope of stop-

ping those tariffs and similar evils that the provision was made. They were stopped.

Mr. RICHARDSON. The railroads did perpetrate wrongs under that?

Mr. FAULKNER. I have heard that they did; I do not know the facts, however.

I desire to submit to the committee a decision in the case of the Interstate Commerce Commission against the Chicago and Great Western Railway Company, decided by Mr. Justice Brewer on March 28, 1908, in reference to this question of the presumption resulting from the advance of rates:

It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. Undoubtedly when rates are changed the carrier making the change must, when properly called upon, be able to give a good reason therefor, but the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done. Those presumptions of good faith and integrity which have been recognized for ages as attending human action have not been overthrown by any legislation in respect to common carriers.

The Commerce Commission did not find whether the rates were reasonable or unreasonable per se. Its omission may have been owing, partly at least, to the decision in *Interstate Commerce Commission v. C., N. O. & T. P.*

Yet the basis of this bill is this presumption that an advance in rates is of itself unreasonable.

I suggest another objection to these bills. I submit the criticism to you knowing that you are superior lawyers, and ask your careful consideration. If a rate is suspended by the Interstate Commerce Commission, and it is subsequently decided that the rate advanced was unlawful, unreasonable, or preferential, and therefore unlawful, is there any method of appeal or review of that decision of the Commission under the act to regulate commerce and the amendments thereof? Has not the Supreme Court uniformly held, in reference to the fixing of reasonableness, fairness, or justice of a future rate, that the courts have no jurisdiction to review the decision of an administrative tribunal, it being purely a legislative act? This proposition is sustained by the case of *Reagan v. Farmers Loan and Trust Company* (154 U. S., 394), the maximum rates case (167 U. S., 479), and not questioned in subsequent decisions.

Mr. TOWNSEND. That criticism lies not only against the amendments, but against the interstate-commerce act.

Mr. FAULKNER. No; we have a right to review the act of the Commission under the Hepburn bill, as it passes on an existing rate which the Commission determines to be an unreasonable rate. We can review that question. It is an existing rate that the Commission determines is unreasonable. Whether the court can go further under the terms of that act and review the rate fixed by the Commission, which is a future rate, is another question; but the rate that has been fixed by the carriers as a reasonable rate is a fact that the court can consider and review. The Commission having set aside that rate by its order, that question can be reviewed, as it is clearly within the jurisdiction of the judiciary.

Mr. RICHARDSON. The court can say that a rate is unreasonable, but it has no inherent right to say what the rate shall be.

Mr. FAULKNER. That is the principle. It has never become a rate. It is a mere proposition. It is suspended. It may never

become a rate. There is nothing for the court to pass upon, as the final decision of the Commission declares it shall not become a rate. There is no provision in the act to regulate commerce, or the amendments of that act, that would authorize the court to review that decision of the Commission.

Mr. STEVENS. According to your theory we could not make any such law, could we?

Mr. FAULKNER. In my judgment, you can not. Such a provision would render the law unconstitutional. The courts have held that where the legislature has delegated to an administrative tribunal the right to fix a rate under certain legislative standards to govern them, that if the act makes the rate so fixed a permanent, final rate that is not reviewable it is unconstitutional; I mean that the rate under the act is not subject to review by a court. Under this bill the order denying the right of the carrier to advance its rate would not be reviewable, no rate having been in existence. If the Commission differed with the carrier and fixed a different rate than that the carrier had proposed, it would fix a future rate, and in its order would direct that it should remain in force for a period not exceeding two years.

Now, what would be the effect of such an act? Can you review that order? In the first proposition, there never having been a rate, the order is not reviewable; in the second the order is establishing a positive rate and is final for a fixed period. The statutes make the rate fixed by the Commission—not *prima facie*, but conclusively reasonable for the time designated in the order. That you gentlemen may examine this question I refer you to the following cases: *Chicago, Milwaukee and St. Paul Railroad Company v. Minnesota* (134 U. S., 418); *Budd v. New York* (143 U. S., 517, which fully explains 134 U. S., 418); *Chicago, Burlington and Quincy R. R. Co. v. Jones* (24 Lawyers' Report Annotated, 141-146).

At 11.30 a. m. the committee took a recess until 11.45 a. m.

AFTER RECESS.

Mr. FAULKNER. The next objection to this bill is that the tendency of such a law would be to destroy the flexibility of American railway rates and produce rates that were stereotyped and unchangeable. Carriers could not afford to reduce their rates in periods of depression or with a view of building up industries along the line of their roads for fear that when they sought to return to normal rates, when conditions became normal, that it would result in long controversies to establish the reasonableness of the advance. This in my judgment is the most serious objection to such a law, and especially is this true when under existing laws every right of the shipper can be fully and completely protected by the authority of the Commission to grant reparation if the rate advanced is unreasonable.

Under the proposed bill there would be no equality in the administration of the law for the carrier should the Commission determine after long litigation that the advance was reasonable. There is no method provided, nor could there be, through which the carrier could recover for the loss of the difference between the old rate and the advance.

I desire, Mr. Chairman, to ask the indulgence of the committee to read an extract from the testimony of Mr. W. M. Acworth, made before the Senate committee when investigating the regulation of railway rates. This statement was made May 9, 1905, and will be found in volume 3, pages 1848, 1852, 1853, and 1854. Mr. Acworth was discussing the canal and railway traffic act of 1893, which imposed new limitations upon railways—first, the statutory maximum; second, rates must not constitute an undue preference to one trader or one district over another; and, third, railway companies must make no increase except for good cause, if anybody objects. Those are the three principles embodied in the act of 1893, which is known as the canal and railroad act of Great Britain, and is still in existence, having been slightly amended in 1894. I was before the Senate committee at the time of this investigation, and personally learned how Mr. Acworth came to appear before the committee. Mr. Acworth is regarded one of the leading experts in England on railway traffic, transportation, and railroad economies. There was an International Railroad Association which met in Washington that year. He was a delegate from Great Britain to that association, and the committee learning he was in the city, requested him to appear before it and make a brief, succinct statement of the legislation of England in reference to railroad regulation. You will see upon the examination of his evidence that after giving the historical facts in reference to the railway systems of England and the effect of the provision of the British laws, he stopped, and the statements that I propose to read to the committee were brought out by his examination by the different members of the committee.

Mr. Acworth said:

Since it has been decided that no rate can be put up once it has been put down, without appeal to the law courts, the railway companies have practically arrived at the conclusion that they will not put them down because they do not know whether they will have an opportunity to put them up again.

SENATOR CULLOM. Do you think it works to the advantage of the people that the railways will not put the rates down for fear they will not get a chance to put them up again?

MR. ACWORTH. Personally I have no doubt it does not. It is fair to remember always that it may protect the weaker in commercial strife. It is rather hard on the weaker man to be crowded to the wall by a wholesale concern in any walk of life. But if it be true in ordinary business that, on the whole, the public gains by the wholesale method, it is probably true in railway business also. I think that, so to speak, the heart has been taken out of the railway man. The railway men understand this business; they know how to manage it in their own way. The railway men think "the responsibility has ceased to be ours; we must maintain the status quo," and that is what they do.

THE CHAIRMAN. You think that dividing responsibility impairs the administrative power of the officials of the roads as well as the service they render to the public?

MR. ACWORTH. From the operating point of view, I do not think our railways have been sufficiently interfered with to prevent them developing the goodness of the service. But as to rate making, I have no doubt that the interference of Parliament, the courts, and the Executive has all tended to stereotype and keep rates at an unnecessarily high level.

THE CHAIRMAN. Would you say that, on the whole, the power to make rates generally and primarily should be left to the railroads and to the free play of the forces of the business world?

MR. ACWORTH. Speaking as an individual student, I have no doubt that that is the process that will arrive at the best results for the community, with this exception: That I fully think it is necessary that the community in some way should interfere to protect all customers from unfair treatment.

THE CHAIRMAN. You think that the power should reside somewhere to correct excessive and extortionate rates by summary and proper proceedings?

Mr. ACWORTH. I am not sure that I should go so far as to say excessive rates regarded as excessive in themselves. I am myself inclined to think that excessive rates will correct themselves. The wise men will discover that it does not pay to charge excessive rates. But I think the law should interfere to prevent unfair rates to A as compared with the rates given to B. It seems to me that the State is bound to insist that the rates shall be public, and that practically will settle it, for if they are public they have got to be fair; I am inclined to think the law should confine itself to securing that, where there is a difference made as between A and B, the difference should be a difference for a commercial reason, and not for any reason of personal favoritism.

Senator FORAKER. And I understand you to say that the effect of fixing maximum rates is to lessen the tendency to reduce rates, which railroads had practiced before this legislation was enacted?

Mr. ACWORTH. I am not quite sure that the maxima have really had very much effect at all. It has been a tendency, but I do not think an important tendency. But the interpretation by the courts of the undue preference law, and the recent limitation that having once reduced you can not subsequently increase, have had that effect markedly, I believe.

Senator FORAKER. So that the rates for the transportation of freight on railroads in England have not been declining. I take it from your statement, in recent years, but have remained practically stationary?

Mr. ACWORTH. I do not know what the average rate is, because there are no statistics in England; but my own impression would be that it had probably not declined to an appreciable extent, whereas in an earlier period it certainly did decline pretty fast.

Mr. Chairman, this is the statement of an expert, absolutely impartial and disinterested, of the effect of the provision in the English statute which it is proposed to enact into law here. It is reasonable to suppose that the same results would follow here from such an enactment as has been observed in England. Every gentleman around this table is aware that it is the policy of the carriers to reduce their rates in conjunction with manufacturers who reduce the price of their product in order to induce a movement of traffics in periods of depression. When normal conditions return, they have the privilege of increasing their rates without litigation and controversy to normal rates. If this law, however, is passed, they will understand that any one can come in and file a protest against any such advance, and that a long litigation may follow. This knowledge will not induce a continuation of that policy by the carriers. Again, take the establishment of industries along the line of a road. We are all aware of the fact that a manufacturer who proposes to establish a business along the line of a road first goes to the officials of that road and says, "What rates can you give me to a certain market where my goods will have to come in competition with similar goods from other sections?" The carrier makes such rates as will enable the product of that manufacturer to be carried to this new market in competition with the product of other sections, with the distinct understanding with the manufacturer and those directly interested in these rates, that as the business develops, as the manufacturer's business grows and becomes self-sustaining that the carrier will gradually increase its rate until the rates are fair and reasonable. Will such a policy be continued with a knowledge on the part of the representatives of this carrier that any one can protest the advance? The success of the American railway system has resulted from this policy, which has given flexibility to our rates. Will you destroy that policy by the passage of this bill?

They make such rates then as will enable that product to be carried in competition to this new market, with the distinct understanding with the manufacturers and those directly interested in these

rates that as the business develops, as the manufacturer grows and gets upon his feet, and can maintain himself, then, if this is too low a rate, the rate shall be gradually increased until a fair and reasonable rate, remunerative to the railroad, shall be fixed as the established rate for that product. All of that would be interfered with by these acts.

I will not detain longer the committee; but I desire to request the committee to permit me to file, on the subject of this bill, the statement of J. M. Johnson, vice-president of the Missouri Pacific Railroad Company; also the statement of Mr. J. E. Gorman, freight traffic manager of the Atchison, Topeka and Santa Fe Railway Company; also the statement of F. A. Leland, who is the chairman of the Southwestern Tariff Committee, and represents, through power of attorney, some 70 roads before the Interstate Commerce Commission. That power of attorney is one which has been signed by the roads and is in accordance with the rules and regulations of the Commission.

I will also request the committee to allow me to file as a part of my remarks a statement from the Wall Street Journal of February 14, 1908, in reference to the principle involved in this bill, which really is a discussion of it by one of the ablest men on railroad transportation—Mr. Henry Fink.

Mr. TOWNSEND. Which bill do you have reference to?

Mr. FAULKNER. I mean the five bills that I have been discussing. This is an interview by Mr. Fink, which presents, I think, very strong views against this whole matter, in very courteous and proper language.

The ACTING CHAIRMAN. The papers will be printed as part of your remarks.

Mr. FAULKNER. Yes; thank you.

(The papers above referred to are as follows:)

THE MISSOURI PACIFIC RAILWAY COMPANY,
St. Louis, Mo., February 14, 1908.

HON. ALEX. G. COCHRAN, *Vice-President.*

DEAR SIR: The gross injustice of Senate bill 423 is in that it gives every shipper arbitrary power to hold up for an indefinite period every proposed increase in rate and every change in rule or regulation governing the movement of traffic, when said change in the rule or regulation is susceptible of the charge that in effect it advances the rate, for the reason that the bill provides that any shipper, regardless of the fact that his interest may be very small and possibly no interest whatever in the commodity moving under the rate in question, may file a protest with the Interstate Commerce Commission which shall operate to continue the existing rate in force until the reasonableness of the rate shall be determined by the Commission. We would understand by this that a complaint filed in this case would be handled in the same manner as a complaint of an existing rate is filed to-day—that is, the complainant files his complaint with the Commission, in due time the carrier complained of is furnished a copy of the complaint, to which the carrier makes answer inside of twenty days, the Commission then sets a time for hearing, after which the Commission, at its pleasure, issues its order, and if the order establishes the reasonableness of the rate it will then be published in accordance with the law. From this we can readily form some idea of the time required to obtain an advance in a rate.

When we take into consideration the thousands of articles transported by the carriers of this country, the hundreds of thousands of rates published for the transportation of those articles, and the thousands of shippers interested in the movement of those articles, we can get some idea of the number of complaints that it would be possible to file with the Commission in case a carrier undertook to make any advances whatever in the classification of freight, regardless of the justness of such advances.

The enactment of this measure abridges the rights of a carrier to make any advance

whatever in its rates, and, in fact, invests the Interstate Commerce Commission with the sole power of rate making, as no increase in a rate can be accomplished until it has been determined by the Commission; so it stands to reason that under the great latitude given the shipper almost every proposed increase in a rate will be protested.

In addition to depriving the carrier of the additional earnings it may be justly entitled to under the increased rate, it would place a burden upon it by requiring it to maintain at an enormous expense a large force to answer and defend the many complaints which would be filed.

The bill undertakes to vest in the Interstate Commerce Commission the power that is now held by the courts. The shipper can to-day invoke the aid of the court should he desire to prevent a proposed increase in a rate being made effective. We believe that power should still remain invested entirely within the court.

What degree of interest is it necessary for a person to have to challenge a rate change? To be sure, if the case came to hearing and it developed the complainant had little or no interest in the rate, he could probably not prevent its eventually becoming effective; but if he had postponed such effectiveness for several weeks, or likely months, he would probably have satisfied some ulterior motive.

Let us say, for example, there are two persons engaged in the same line of business, one with interests entirely in St. Louis, and the other with interests in both St. Louis and Chicago, the latter of a predominant character, a rate is contemplated from St. Louis to Omaha, adjusted to suit the commercial conditions of the man in St. Louis, the man with interest also in St. Louis, but with larger interest in Chicago, can disturb the business arrangements of the St. Louis shipper by holding up the change indefinitely, so the St. Louis man absolutely will not know on what terms he can base his contracts, while the Chicago man has a reasonable assurance of his own conditions.

We understand the provision of the law as to thirty days' notice of changes in rates was calculated to invest rate conditions with a greater degree of stability than formerly, and remove to as great an extent as possible the advantage that one shipper obtained over another by the short notice formerly required in making changes in rates. A shipper would have thirty days' advance notice of what his rates would be and would know that once they became effective they could not be modified without a like thirty days' notice. He could, therefore, be assured of that degree of permanency and predicate his purchases and sales accordingly. Under the proposed order of things he will never know whether or not a rate is to become effective on schedule time, or if it ever will, so the effect of this amendment is to nullify that degree of permanency to a large extent as it gives the shipper power to extend the time in which an advance may be made in a rate, and by reason of this, in many cases, would enable him to take advantage of his competitor. For example, we will say, there are two men engaged in the same line of trade; they are both called upon to bid on a contract involving a large movement of a given commodity, in which they both deal. The carrier has just given notice of an advance in rate effective thirty days hence; the commodity is not to move until sixty days hence; one man files his bid based upon the advanced rate, assuming that notice of the carrier will be made effective, the other shipper waits until two or three days before the date the rate is to be made effective, then files a protest, knowing it will take three or four months to have the matter adjudicated and makes his bid on the current rate thereby securing the contract.

The provision is absolutely one sided. Under the present order of things, if a rate became effective, is questioned and held unreasonable, the shipper can always recover by reparation the amount the Commission may decide he has been overcharged; but under the proposed order of things, if the same rate were published, challenged, its effectiveness deferred, but upon hearing was adjudged reasonable and put in force, there is no method by which the carrier could recover from shippers the amount of which proceedings had wrongfully deprived them; that is to say, the amount of freight charge on shipments moved between the date the rate was published to go into effect and the date it was allowed to go into effect, computed at the difference between the old and the new rate.

The country's rate adjustment is honeycombed with differential basis, and they are recognized as a commercial necessity. This provision would place them all in jeopardy. For example, suppose a rate to be published from St. Louis, to be followed differentially from Chicago; if the change from Chicago were questioned, the differential adjustment to which business conditions are fitted would go to smash.

It, upon final analysis, takes the rate-making power out of the hands of the railroad and places it absolutely with the Commission.

Yours, truly,

J. M. JOHNSON, *Vice-President.*

CHICAGO, ILL., March 9, 1908.

The COMMITTEE ON INTERSTATE COMMERCE,
United States Senate, Washington, D. C.

GENTLEMEN: I reached Washington Friday morning, March 6, for the purpose of stating to your committee our objections to bill S. 423. The time of the session was fully occupied by Messrs. Culp and Paulding, and as the further hearing scheduled for Saturday at 11 a. m. did not take place I am taking the liberty of putting my views in writing.

The Fulton bill is objectionable because it would place too great a power over freight rates in the hands of single individuals, whose interest in the matter might be very slight. We feel the right of initiating rates belongs properly to the carriers, and the shippers have, under the present law, ample means of relief in case it can be shown the rates as initiated by the carriers are unreasonable or unfair. A fatal defect in the Fulton bill is the readiness with which a shipper might, through the medium of the provisions of that bill, if it became law, accomplish the very thing which the interstate commerce law and the Hepburn amendment aimed at preventing, namely, a discrimination in favor of one shipper as against another. To illustrate:

The grain-carrying roads from, say, Kansas City might, as a result of keen competition, reduce their tariffs on grain below the normal basis, and later on wiser counsel might prevail and a conclusion reached to advance the rates from the reduced to the normal basis. This reasonable conclusion would be followed by the publication of freight tariffs showing the rates were to be advanced at a stated time. The date of the advance would of necessity be more than thirty days from the time the tariff was published and filed with the Interstate Commerce Commission. The grain trade generally would adapt itself, or undertake to adapt itself, to the advanced rate basis, which all recognized as a natural and proper action. One or more of the many grain shippers might, however, quietly continue selling grain for delivery after the date named for the advance in rates on the lower-rate basis. This would insure to them the trade and the advantage over their neighbors, who were trying to trade on the advanced rates. Two or three days before the date on which the advanced grain rates were to become effective, one or more of these grain shippers, who had sold a lot of grain on the basis of the reduced rates, which grain was still to be moved, would write to the Interstate Commerce Commission a protest against the proposed increase in rates, and would state clearly the grounds of their objections to the proposed change. The filing of such protest would operate to continue in force the then existing or lower rates until the reasonableness of the advanced rates would be determined by the Commission. In all probability the determination of the question would occupy as much time as these one or two shippers would need in order to accomplish the delivery of the sales they had made on the lower-rate basis, while all of their neighbors had been trying to do business on the higher-rate basis. Having made their deliveries the protesting shippers would have no further interest in the protest, and the Commission in all probability, under such circumstances, would approve of the advanced schedule which would take effect. Meantime the law, if amended in accordance with bill S. 423, would have accomplished a discrimination in favor of certain shippers and against certain other shippers, which every one is nowadays striving so hard to avoid, and we feel the possibility of even such a thing occurring is sufficient reason why the bill proposed should not become law.

While in Washington I heard it was likely the Fulton bill might be amended to provide that the Interstate Commerce Commission might, in its discretion on receipt of a protest against a proposed advance in the rates, order the carriers to defer making the advance in the rates. This change, if made, would be far less objectionable than the terms of bill S. 423, but we think it is nevertheless objectionable, because we believe the law as it is now is fair to all concerned. Furthermore, we have not as yet perfected the tariff publication matter under the terms of the Hepburn bill and the rules and regulations issued by the Interstate Commerce Commission for the government of the carriers in the publication and filing of their freight tariffs, and we think it highly desirable that further legislation in relation to freight rates be deferred at least until the work of putting the tariff publications in line with the law, the rules, and the regulations is completed, and this will require at least another year's time.

Yours, very truly,

J. E. GORMAN.

SOUTHWESTERN TARIFF COMMITTEE,
St. Louis, Mo., March 20, 1908.

MY DEAR SENATOR: I inclose herewith a letter which I promised to write to you about the Fulton bill. I am not fully satisfied with the letter, but I have given the

subject all the time at my command and I shall have to be satisfied with the results.

If you decide to have the letter placed before the committee as evidence, it may be well for you to indicate to the committee that the writer has had long experience in connection with the subject discussed and is at the present time the agent for the lines whose names are shown on the attached list in the publication of tariffs naming freight rates between Arkansas, Oklahoma, Texas, and the Republic of Mexico and points all over the United States, his authority for the issuance of tariffs being powers of attorney executed by each carrier and filed with the Interstate Commerce Commission in accordance with the form prescribed in their rules; his office is devoted to the changes which are being made in freight rates, and that his opinion comes from his contact daily with these changes.

Very truly, yours,

F. A. LELAND.

Hon. C. J. FAULKNER,
Kellogg Building, Washington, D. C.

To be filed with the Interstate Commerce Commission.

— GENERAL FREIGHT DEPARTMENT,
—, 1908.

No. F X. 4, No. —.

To the Interstate Commerce Commission:

This is to certify that the ——— assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the Chicago, Rock Island and El Paso Rwy., Chicago, Rock Island and Gulf Rwy., Chicago, Rock Island and Pacific Rwy., El Paso and Northeastern R. R. Co., El Paso and Northeastern Rwy. Co., El Paso and Rock Island Rwy. Co., Fort Smith and Western R. R., Fort Worth and Denver City Rwy., Fort Worth and Rio Grande Rwy., Galveston, Harrisburg and San Antonio Rwy., Galveston, Houston and Henderson R. R., Gulf, Colorado and Santa Fe Rwy., Hearne and Brazos Valley R. R., Houston and Shreveport R. R., Houston and Texas Central R. R., Houston, East and West Texas Rwy., Iberia and Vermillion R. R. Co., International and Great Northern R. R., Jasper and Eastern Rwy. Co., Louisiana and Arkansas Rwy. Co., Louisiana Western R. R. Co., Mallory Steamship Co., Midland Valley R. R., Missouri, Kansas and Texas Rwy. Co., Missouri, Oklahoma and Gulf Rwy., Morgan's Louisiana and Texas R. R. and S. S. Co., Oklahoma Central Rwy. Co., Orange and Northwestern R. R., Paragould Southeastern Rwy., Paris and Great Northern R. R., St. Louis and San Francisco R. R. Co., St. Louis, Brownsville and Mexico Rwy., St. Louis, El Reno and Western Rwy., St. Louis, Iron Mountain and Southern Rwy. Co., St. Louis, Kansas City and Colorado R. R., St. Louis, San Francisco and Texas Rwy. Co., St. Louis Southwestern Rwy. Co., St. Louis Southwestern Rwy. Co. of Texas, San Antonio and Aransas Pass Rwy. Co., Santa Fe, Prescott and Phoenix Rwy. Co., Southern Pacific Company—Atlantic Steamship Lines, Stephenville, North and South Texas Rwy., Texarkana and Fort Smith Rwy. Co., Texas and New Orleans R. R., Texas Central R. R., Texas Midland R. R., The Atchison, Topeka and Santa Fe Rwy. Co., The Beaumont, Sour Lake and Western R. R., The Denison and Pacific Suburban Rwy. Co., The Eastern Rwy. Co. of New Mexico, The Kansas City, Mexico and Orient Rwy. Co., The Kansas City, Mexico and Orient Rwy. of Texas, The Kansas City Southern Rwy. Co., The Leavenworth and Topeka Rwy. Co., The Missouri, Kansas and Texas Rwy. Co. of Texas, The Missouri Pacific Rwy. Co., The Pecos and Northern Texas Rwy. Co., The Pecos River R. R. Co., The Pecos Valley and Northeastern Railway Co., The Southern Kansas Railway Co. of Texas, The Texas and Gulf Rwy. Co., The Texas and Pacific Rwy. Co., The Texas Mexican Rwy. Co., The Texas Southern Rwy., The Trinity and Brazos Valley Railway Co., The Weatherford, Mineral Wells and Northwestern Rwy., The Wichita Falls and Northwestern Rwy. Co. of Texas, The Wichita Falls and Northwestern Rwy. Co., The Wichita Falls and Southern Rwy. Co., The Wichita Valley Rwy. Co., or its agent may make and file, in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon freight traffic, excepting ——— from Arkansas, Oklahoma, Texas, and Old Mexico to or via ——— (but not from points thereon), until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and the carrier to which this concurrence is given.

SOUTHWESTERN TARIFF COMMITTEE,
St. Louis, Mo., March 20, 1908.

Hon. C. J. FAULKNER,
Kellogg Building, Washington, D. C.

DEAR SIR: In compliance with your request, I beg to submit my views in connection with Senate bill No. 423, known as the Fulton bill, as follows:

The principal objections occurring to me to this bill and the amendments which have been suggested by the subcommittee are—

First. The stiffening effect upon all interstate freight rates, due to eliminating from such rates the present element of flexibility, which is of the greatest importance to the shipping public.

That you may understand this statement, I beg to outline briefly, for your information, the manner in which rates are changed.

A very small percentage of the changes in freight rates, either reductions or advances, are evolved by railroad officials. Practically every change in rates is the result of suggestion from one or more shippers, who find that by some modification in the existing schedules their business in a certain territory can be increased by enabling them to meet competition which they encounter from other sources of supply, which are in most cases served by rival railroads. Their representation is that by the proposed change their profit or business will be increased, and consequently the railroad serving them will share in an augmented traffic which, at the time of the suggestion, is being handled by the rival shipper and carrier.

Ninety or more per cent of these suggestions are for reductions in rates or for changes in rules and regulations beneficial to shippers and classed as reductions. The railroad company is anxious at all times to increase its traffic and gives a keen ear to such pleas of the shipper. The railroad official to whom such requests are made carefully investigates the conditions recited by the shipper and, by correspondence with such railroad's representatives at the points of origin and destination, confirms, if possible, the views of the shipper and the effect of the proposed change on the tonnage and revenue of the company. The traffic official of the railroad thus being daily engaged in investigations of this kind becomes very proficient in his knowledge of the factors surrounding the movement of the principal articles of commerce and becomes, after experience, a ready judge of the merit of such propositions. When thus convinced, he becomes the agent of the shipper in securing the proposed adjustment. This may take the form of suggesting to a rival railroad that the advantage which its shippers have enjoyed is unjust and that he should be permitted, without any corresponding reduction on the part of such rival railroad, to reduce his rate that the complaining shipper may profitably secure an increased share of the competitive traffic in question. Being unable to thus persuade the competing railroad of the merits of such a contention, he is forced to proceed by reducing his own rate without regard to the possible change which may follow on the part of other railroads as a consequence of his reduction.

It will, therefore, naturally be seen that the railroad official and the shipper are constantly planning to increase the business in which they are jointly interested, to the disadvantage of the rival railroad and shipper. Sometimes these efforts result in serious rate wars until the point in controversy has been adjusted and the competitive rates placed on a basis which is more nearly equitable to all concerned. In many instances these disputes result in arbitration either by the Interstate Commerce Commission or by individuals who may be agreed upon by the contending interests.

Bearing in mind, therefore, that practically all rate reductions are the result of the effort of the railroad company to serve the shipper, it can easily be seen what the result will be if no advances in rates can be made without practically the approval of the Interstate Commerce Commission. Where it is difficult to restore rates to normal figures, the carrier will be loath to reduce them in order that the shipper dependent upon such carrier may increase, for the time being, his share in the competitive traffic in which he is interested.

Second, it would prevent the carriers from giving to new enterprises established along their lines the encouragement which is so vital, in many cases, to the success of such ventures. It frequently occurs that manufacturing plants and other new business enterprises are established in territory which has not heretofore enjoyed such, due to the discovery of gas, coal, or other natural advantages which in the opinion of the promoters warrant the belief of profitable return from such investments. It is, however, found in nearly all of such instances that such enterprises can not place their products in the competitive markets because the regular class rates which have existed from such points of production to the rival markets are prohibitory as compared with the low commodity rates from other sources of supply. In such instances the rate which is necessary to successfully compete is largely conjectural. If the rate is made too high, the enterprise fails; if it is made too low, the carrier assumes a portion of the burden of such competition, which he should not be called upon to do. The success

of such enterprises is directly due to the flexible nature of freight rates and the ability of the carrier to promptly respond to the demand of the shipper for assistance wherever it may be found necessary. The attitude of the carrier toward such shipper is dependent upon the carrier's freedom of action in rate adjustment. The carrier desires the enterprise on its rails; it desires to make such reasonable rates for the products thereof to the consuming markets as will enable the enterprise to grow, its tonnage to increase. It believes that if it makes exceedingly low rates in the first instance that the shipper may enter into competition with his rivals and later on it is found that the competitive conditions have so changed as to warrant slight increases in the rates, it should be permitted to make them so long as the shipper is given the full protection of the law which guarantees to him that the rates shall not be unreasonable, discriminatory, or otherwise unfair.

Third. The level of rates in this country is exceedingly low; in not many cases are there complaints that the rates per se are unreasonable. Complaints regarding freight rates are, in most every instance, based on the relation of such rates to other rates which in the minds of complainant are deemed lower or which in actual practice discriminate in favor of the rival shipper as compared with the complainant. The majority of the cases placed in the hands of the Interstate Commerce Commission for consideration involve this principle, and a fair adjustment of such complaints requires in numerous cases not a reduction in the rates complained of, but rather an advance in the rates with which they are compared.

Stability of freight rates is desired, but not to the extent that the railroad shall not feel warranted in promptly applying remedies for the relief or assistance of shippers who find themselves no longer able to compete due to advantages which other shippers have secured or changes which have occurred in the conditions surrounding the marketing of their products. Any effort at lawmaking which tends to minimize the commercial competitive conditions in evidence at the present time in the selling of transportation by the carriers to the shippers will result to the disadvantage of such shippers, and therefore ultimately to the injury of the carriers and the communities served by them.

Fourth. In the event there was any disposition on the part of the carriers of this country to make such serious advances in their rates as would injure the shippers on their lines or prevent their marketing their products in fair competition with other shippers and other railroads, it is my belief that the present law is fully effective to prevent such a course. The tendency of freight rates in this country is not toward advances, but is directly and forcefully in the other direction. Notwithstanding testimony which has been presented to the committee, it can be demonstrated, at least in our territory, that by far the greatest number of changes in rates which have been made since the effective date of the Hepburn bill have been reductions, and there is no reason to believe that this will not be the course during the future if the price of railroad transportation is left to the commercial conditions which govern in the sale of all other commodities.

Under the present law any advances in freight rates can be complained of to the Interstate Commerce Commission, which body is pledged to fully investigate such charges, and they are authorized to apply the necessary remedy even to the extent of declaring what shall be the maximum rate for the ensuing two years. In the cases referred to in some of the testimony before the committee the Commission did not have this power, and this fact alone is responsible for the tremendous delay ensuing from the filing of the complaint, the decision of the Commission, and the final judgment of the Supreme Court. There has been no case since August 28, 1906, where the Interstate Commerce Commission has, on complaint, after a full hearing, fixed a rate where the carriers have not promptly made that rate effective. It seems to me that this remedy is ample and that no further legislation, such as proposed, is required, and that if enacted it would, for the reasons which I have tried to outline above, be a serious menace to the shipping public.

Very truly, yours,

F. A. LELAND, *Chairman.*

[From the Wall Street Journal, February 14, 1908.]

COMMISSION TO CONTROL RATES IF FULTON BILL IS ENACTED—HENRY FINK GIVES EXPERIENCED RAILROAD MAN'S VIEW OF LATEST FEDERAL REGULATIVE MEASURE—POWER OF THE COMMISSION TO PREVENT INCREASES IN RATES WILL PREVENT ROADS FROM REDUCING RATES IN TIMES OF DEPRESSION—RIGID TARIFF SYSTEM WOULD REPLACE OUR PRESENT ELASTIC ONE—ROADS REQUIRED FIRST TO ESTABLISH REASONABLENESS OF ADVANCE.

A measure known as the Fulton bill, designed to enlarge the powers of the Interstate Commerce Commission, and particularly to give that body practical control over

railroad rates, has been introduced into the United States Senate and referred to the Committee on Interstate Commerce. This week's Washington dispatches indicate that the Fulton bill has strong backing in Congress and that a vigorous effort will be made to get it passed.

The bill was framed in response to the recommendations which the Commission made in its last annual report. In substance, it provides that the Commission shall have the power to prevent any advances in rates proposed by any railroad until after full investigation by the Commission. The bill does not provide what shall be done upon the completion of such investigation, but under the powers already conferred upon the Commission it will have the authority to order the carrier to perform the service at the old rate; in other words, the Commission will be able to prevent the railroads from advancing any rate, while it is not entirely clear that the carriers would have any recourse from such an order, even to the courts.

While the Fulton bill has apparently not attracted general attention even in railroad circles, a few railroad men are fully alive to the situation and are convinced that this measure is of the highest importance. One of these is Henry Fink, chairman of the board of directors of the Norfolk and Western, who has been a close observer of legislation affecting the railroads throughout the larger part of his railroad career of half a century. Mr. Fink made the following comment upon the Fulton bill:

"The Fulton bill is the most important and mischievous railroad measure which I have ever seen. Its effect would be to grant the Interstate Commerce Commission what it has long desired; that is, practically absolute control over the railroad rates of the country. Probably few persons grasp the full import of this bill. On its face it seems only to give the Commission the authority to prevent increases in rates, but the practical results of such a law would go very much further than that. Such a law would mean a rigid freight tariff in place of our present system, which is flexible enough to meet the varying conditions of our trade. One of the greatest advantages of our American system of transportation over those of European countries is that the railroads have been able to meet conditions as they arose and in many cases to enable shippers to continue in business when they would otherwise have been unable to do so.

"In prolonged periods of depression the railroads invariably lower many of their rates in order to enable factories to continue running, producers to reach their markets, and merchants to meet the demand of their customers for lower prices. Rates on pig iron, for example, are lowered when the price of the iron declines seriously, and not only the rate on iron itself but likewise the rates on iron ore, limestone, and other commodities used in the iron industry. Rates on these commodities have frequently been placed so low that they failed to cover even the cost of conducting transportation. In this way the railroads have not only been able to save themselves from an entire loss of traffic, but have at the same time rendered the communities dependent upon them an invaluable service.

"Up to the present time the railroads have been ready to grant such concessions whenever there was a prospect of assisting the transaction of business, because they were free to restore rates on the return of normal industrial conditions. If the Fulton bill becomes a law, the railroads will be powerless to render any such assistance in time of need, because they will have no assurances whatever that a rate temporarily reduced can afterwards be restored to a profitable level. It is clear that no railroad will run the risk of adjusting its tariffs to a hard-times basis with the possibility of being tied down to that basis on the return of business activity, which brings with it an upward tendency of wages and other operating costs.

"One of the vital provisions of the bill is that in the proceedings before the Commission to determine the reasonableness of a proposed higher rate the burden of proof shall be upon the railroad company to show that the proposed rate is reasonable. Heretofore the burden of proof has been upon the complainants to show that a rate is unreasonable. This is a very important point.

"As I understand this measure it leaves the railroads unable to appeal from Commission to the courts. The Supreme Court has decided time and again that it will not determine a future rate, having held that to do that is to exercise an administrative instead of a judicial function. The courts will pass upon the reasonableness of a rate which has become a fact, but it will not fix rates to be put into effect. Now, the Fulton bill proposes to enable the Commission to prevent any higher rates than those now in force from becoming effective, and therefore I don't see that the railroads will be left any grounds upon which to base an appeal. At any rate, the proposed law would put the railroad rates of the country completely in the hands of the Interstate Commerce Commission."

The significant clause of the Fulton bill is inserted in the existing law immediately following the provision that thirty days' notice must be given of a proposed change in any tariff, and reads as follows:

"Provided further, That at any time prior to the expiration of the notice herein required to be given of a proposed increase of rates, fares, or charges, or of joint rates, fares, or charges, any shipper or any number of shippers, jointly or severally, may file with the Commission a protest, in writing, against the proposed increase in whole or in part, stating succinctly the grounds of his or their objections to the proposed change. The filing of such protest shall operate to continue in force the then existing rate or rates, fare or fares, charge or charges, proposed to be changed and protested against as aforesaid, until the reasonableness of the rate or rates, fare or fares, charge or charges, proposed to be substituted shall have been determined by the Commission. Upon the filing of such protest, a copy thereof shall be mailed by the secretary of the Commission to the carrier or carriers proposing the change, and thereafter the Commission shall proceed to hear and determine the matter in all respects as it is required to do by sections thirteen and fifteen of this act, in case of a complaint made because of anything done or omitted to be done by any common carrier, as provided in said section thirteen; but throughout the proceeding the burden of proof shall be on the carrier proposing the change to show that the rate, fare, or charge proposed to be substituted is just and reasonable."

The ACTING CHAIRMAN. Do you desire to be heard at this time, Mr. Paulding?

Mr. PAULDING. Mr. Buckland is here, Mr. Chairman; and I will give way to Mr. Buckland if he wishes.

STATEMENT OF EDWARD G. BUCKLAND, ESQ., VICE-PRESIDENT OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

Mr. BUCKLAND. Mr. Chairman, and gentlemen of the committee: I shall not occupy a great deal of your time, and perhaps in the opposition to such bills as I shall touch upon I shall make my remarks rather general.

I represent the New York, New Haven and Hartford Railroad Company—a system which practically controls the transportation of southern New England, embracing something over two thousand miles of line; also a system which, from the start, has been absolutely in sympathy with the policy of this Administration and the policy of this committee in the passage of the Hepburn bill and in the matter of governmental regulation. During the time when the Hepburn bill was under discussion President Mellen of our company was here advising with members of this committee, with the Executive, and with members of the Senate committee, in reference to the final shape in which that bill was to be put. And I think that it is safe to say that the policy of the company has, from the start, been in favor of proper governmental regulation, through the interposition of a commission which should do justice between the shippers and the common carriers.

I take it that the duty of a common carrier is performed when it carries for all alike at a reasonable rate and with reasonable service, and I believe that to be practically the whole duty of the carrier. That necessarily involves the question of capitalization, because the reasonableness of a rate is necessarily so involved. And I believe that you will find that when that threefold duty of a carrier has been performed it would be to the commercial interests of this country to allow such a carrier to work out its own salvation according to the ingenuity of the men whom its stockholders have put at its head. For that reason it seems to me that when you have given the power

to the Department of Justice and to the Interstate Commerce Commission to enforce the performance of those three duties you ought to let them work it out and not interfere through legislation from time to time which seems to touch upon some evils that appear without the full opportunity having been given to the tribunal which you have created to work out with the railroads and with the shippers the prosperity of both; for I take it, gentlemen of the committee, that no railroad can permanently prosper at the expense of its shippers and that no shipper can permanently prosper at the expense of the common carrier. I believe absolutely that the two relations are so correlated that the nonsuccess or failure of one means a similar failure of the other, and that that rate is a reasonable rate which fairly divides the prosperity of the carrier with the prosperity of the shipper.

I do not believe, in the first instance (referring perhaps to this Fulton bill), that you will find, either from the Interstate Commerce Commission or from the great mass of the shippers of this country, any objection to the level of the rates on the average. I do not mean to say that some rates are not too high. I know that some rates are too low. But the evil on account of which the Fulton bill was introduced in the Senate, and similar bills have been introduced into the House, was due to the fact that either through the ignorance or the incompetence of the traffic managers of our railroads a rate has been raised during the time for the fulfillment of a contract. And it does not need any legislation to convince any man of common sense that the rate being a tax upon the industry, while contracts respecting that industry are being fulfilled that rate must stay where it is.

How shall we accomplish this? Not by legislation. If there is one thing which is borne in upon the railroads of this country and upon every shipper who has examined this question carefully, it is that the shippers and the railroads, through the medium of the Interstate Commerce Commission, are getting closer together every day along the common ground which I have just stated. I know, and I believe that you gentlemen will agree with me, that if the Interstate Commerce Commission to-day will simply make the announcement to the various traffic associations of this country that any raise in a rate during the season for the fulfillment of a contract as to a commodity will be per se unreasonable, they will stop it, and stop it permanently; and that is the practical way to do it.

Mr. ESCH. Are there not some commodities which have no seasonable period of transportation?

Mr. BUCKLAND. If that is so, Mr. Esch—and I have no doubt that it is so—then I say that there should be such an understanding between shipper and carrier that the shipper and carrier will agree that there should be no raise in the rate excepting at certain well-defined dates; and the shipper can then make his contracts accordingly.

For instance, take the coal business up in New England: If it is known by our company, the Boston and Maine, or any other company up there, that the tariffs on coal will remain stable between April 1 and October 1, that is all the shippers want; it is all the coal dealers want. They want to know how long they are going to remain there.

Mr. TOWNSEND. Is there any likelihood of that beautiful dream ever being realized?

Mr. BUCKLAND. I think that it is being realized. Not only that, but I am backed up in that opinion by the chairman of the Interstate Commerce Commission, who thinks identically the same thing.

The ACTING CHAIRMAN. Your idea is that if all men were good we would not need any law.

Mr. BUCKLAND. Not at all, sir. My idea is that where there is the power in this Government to regulate rates, that power should be exercised, and should be exercised in the most practical way—not by continual legislative action, when you have put it in the power of a commission absolutely to control the situation.

Speaking of what you said, Mr. Townsend, on that very point, when this Fulton bill came up (and the bill of which you are the author, I believe, is one of them), I had occasion to confer with the President upon the very point of which you are now speaking, upon that feature of the bill. The President referred the matter to the Interstate Commerce Commission. The chairman of the Interstate Commerce Commission wrote a letter to President Roosevelt, who, in turn, sent it to me. I there made the point that the Commission could, by going to the chairmen of half a dozen traffic associations in this country, absolutely accomplish all that is sought to be accomplished by these bills. And practically the only objection which was made to the plan which I have proposed was that these traffic associations are to-day rather tacitly recognized as necessarily unlawful associations under the Sherman Act.

There is not any doubt in your mind, there is not any doubt in my mind, there is not any doubt in the minds of the shippers or of the Department of Justice, that the rates in this country are made by the traffic associations. There is no use of our blinking that fact. It has to be so, and it will be so. And it only requires the application of a little practical community of interest between shippers and railroads and the Interstate Commerce Commission to bring about this result, which is the common-sense result. I am not asking for any empyreal dream here; I am asking for that which is good business—which is good business from the railroad standpoint as well as from the shippers' standpoint.

Mr. KENNEDY. You think, then, there ought to be some change of our law that would give the railroads a right to make rates in conjunction—that is, that they ought to have a right to agree?

Mr. BUCKLAND. There is no question about it. It has to be so.

Mr. KENNEDY. I think there is no doubt about it.

Mr. BUCKLAND. It is being done all the time.

Mr. KENNEDY. That being recognized, it would destroy competition among railroads?

Mr. BUCKLAND. I am very glad you brought up that point. This is radical. I am not speaking now from the standpoint of any argument, but I take it that this railroad situation is coming to this: If the Government, through the Interstate Commerce Commission and the courts, is going to say what is to be the maximum rate, what are to be reasonable facilities, and what shall be a fair rate to all concerned, it inevitably means combination.

Mr. KENNEDY. And eliminates competition.

Mr. BUCKLAND. Absolutely. The authority which the Government has carries with it that other responsibility; and this is coming just as surely——

Mr. KENNEDY. And there ought to be some power that would prevent a new railroad from being constructed through a territory that only has commerce enough to support one?

Mr. BUCKLAND. I think so. The abuse of that situation now is all in the hands of the Government. You must recognize the transportation business in this country as a monopoly over the territory which it serves.

Mr. KENNEDY. And necessarily have complete regulation?

Mr. BUCKLAND. Absolutely complete regulation.

Mr. ESCH. Then would you advocate the pooling provision of this new so-called Hepburn bill?

Mr. BUCKLAND. I do not advocate it in just those terms, Mr. Esch. I felt just this way: Without going into the details of the general principle (and I had something to do with drafting a bill which had that in mind), I thought that these traffic associations ought to give notice of their various hearings—the Trunk Line Association, the Central Traffic Association, the Central Freight Association—wherever they may be, and give notice of the various things that are coming up before them, and let the shippers come up there at these meetings and let them be public. If the railroads have any reason for advancing a rate let them state it then and there and argue the reasons for it, and let the shippers state their reasons against it.

Then, when you have your hearings public, when you have your traffic association conducting its hearings in a public manner, there is no danger that there will be any rate put in effect which will not eventually be a just rate; and the nearer you can get your shippers and your railroad people together, the better it will be for both of them. I know that is so. I know that up in New England, where it is a little bit of a community, where practically every other man is a stockholder in the road, and where we have traffic officers scattered all over New England, we get closer to our people.

Mr. KENNEDY. If I might bring you back to the question of pooling rates (although it is a little collateral to this issue), if the railroads should meet together and agree upon a pool, after the law is changed (as I hope it will be), that ought to be submitted to the Interstate Commerce Commission?

Mr. BUCKLAND. Oh, I think so; I think so.

Mr. KENNEDY. Do you not think it ought to be submitted to them for approval before it is put in effect, rather than to have it put in effect and then be questioned afterwards?

Mr. BUCKLAND. I should want to know just what you meant by the word "pool."

Mr. KENNEDY. Suppose they meet and agree upon a joint or a common rate?

Mr. BUCKLAND. That is a different thing. If they were to meet and agree upon a joint rate, and that meeting were public, and the shippers had an opportunity to be heard, I am rather inclined to think that the railroads, being responsible for their revenues (because they only get their revenues from passengers and freight), should have the right, in the first instance, to put that rate into effect. If it

comes to a pool, technically, whereby one railroad says: "You can have 10,000 tons of traffic," and another one says: "You can have 20,000 tons of this traffic," that is a different thing.

Mr. KENNEDY. That is practically the same question that we are discussing in this bill, is it not? Whether or not, a rate having been once established by the railroad, it shall be raised at its initiative, without first having the approval of the Interstate Commerce Commission?

Mr. BUCKLAND. Yes; I appreciate that. There is just this distinction: I feel very strongly that the shippers ought to have something to say to the traffic associations before they raise rates; and I feel that at least there ought to be a chance to work out that proposition without asking for positive, stereotyped legislation upon it. I think that is good business.

Mr. ESCH. Would not your plan compel a recognition of the traffic associations?

Mr. BUCKLAND. No, sir.

Mr. ESCH. Would it not give them, in fact, a legal status?

Mr. BUCKLAND. No, sir; not at all. I will tell you why. The representatives of the various railroads that to-day attend traffic associations—and there are railroad attorneys here who will bear me out—all go home with a fixed opinion in their mind that they have not agreed with anybody about anything. But they all come out with the same rate, and they all go home and recommend to their various traffic people the rate that they have fought over. You may disguise it as you like, but it amounts to the same thing.

Answering your question specifically, it would only be necessary for the Interstate Commerce Commission to say to the traffic officials of this country—I mean by that the freight traffic managers of the various roads—or to put out an administrative order embodying what I have said to bring the railroads absolutely to a recognition of it. I do not believe that you will find a railroad in this country which will dispute the proposition; and it is only, as I say, because traffic managers have not been "onto their jobs" (to use a pat expression) that these situations have arisen.

Mr. TOWNSEND. What makes you think that they will get "onto their jobs" hereafter?

Mr. BUCKLAND. I think their stockholders and their directors will make them get onto their jobs.

Mr. TOWNSEND. They have not done so up to date, have they?

Mr. BUCKLAND. They have not had very much time. We have been doing a whole lot of work under this Hepburn Act, and we have not had very much time. It has been in effect now eighteen months, has it not?

Mr. TOWNSEND. Of course you represent a very commendable road, according to your statement, at least. Do you think all the roads are inclined, as you are, to take the shippers into their confidence when they fix rates?

Mr. BUCKLAND. Yes, sir; I do. Oh, to take shippers into their confidence when they fix rates?

Mr. TOWNSEND. Yes; or schedules?

Mr. BUCKLAND. I think the tendency of railroads to-day is to consult more and more with shippers before they change their rates. I

think the tendency of the broad-minded traffic managers to-day, and I am happy to say that they are increasing very rapidly in number, is to get just as close to their shippers as they can.

Mr. ADAMSON. I do not much believe in absolute consolidation; but if you are disposed to show any respect to the patrons along your route to consult them about the rates and changes and schedules and connections, I would be glad if you would extend your road and come down to my section of the country.

Mr. BUCKLAND. I do not think I am quite so theoretical as your remarks might indicate, sir; but it is only good business after all.

Mr. ADAMSON. I think so myself. I fully agree with you.

Mr. BUCKLAND. It is only good business.

Mr. TOWNSEND. I have always realized that; and I have always thought it was good business for railroads to adopt safety devices and all these things without any compulsion on the part of the law; but the law has been necessary.

Mr. ADAMSON. I know some railroad men who think they are great and smart, who are just biting off their noses to spite their faces, and crippling themselves more than the towns that they discriminate against.

Mr. STEVENS. Is not this the real trouble and the real situation: That the great majority of the roads in the West and South are not operated from the field, but they are operated from New York?

Mr. BUCKLAND. I do not know, Mr. Stevens, because I have never operated in the West and South.

Mr. ADAMSON. There is a great deal in that suggestion.

Mr. BUCKLAND. I know that the people in New England and in New York are right onto their own railroads.

Mr. STEVENS. That is, the real center of authority of our western and southern roads is in New York, and they do not fix the rates, but they expect results; and if the men in the field do not get results, they will get somebody who will.

Mr. BUCKLAND. I venture to say that if you give to a division superintendent and to a general freight agent the authority which they ought to have, you will put an end to a great deal of these complaints in the case of the railroads.

Mr. ADAMSON. I know two or three towns that have been discriminated against, over the judgment of all the local railroad men who operated the trains and managed the business at those towns, at the behest of some bullheaded people who, at a distance, controlled the affairs of the roads; and the roads have suffered as much as the towns thereby.

Mr. BUCKLAND. Of course I can not answer that; but I think that if I were in a town that was suffering from a proposition of that sort, I should certainly take it to the board of directors before I got through with it. I would not stand upon any turn down by a traffic officer or anybody else who was some distance from me; but I should put it right up to the directors, and tell them that the business of the road demanded that they should cooperate.

Mr. ADAMSON. As a Member of Congress of course I can not discuss here what I might advise as a lawyer. That is another thing.

Mr. BUCKLAND. I must get along, because I do not want to take up so much of the committee's time.

There have been several bills brought before this committee on the question of railroad valuations, and I only wanted to say this in reference to that subject:

We have made an appraisal of our railroad. I do not think it is going to do us any particular good in fixing our rates. I think it is going to give us some satisfaction in knowing how much our terminals have increased in value since we bought them. I do not believe there is any particular objection to the valuation of a railroad being made by the Government; but I do think there is every objection to using that valuation as a basis for fixing the rates of that railroad. To do so would absolutely upset your whole theory of differentials and put out of business the longer-line railroads.

I do not know whether the committee is considering this question of valuation seriously or not. If so, I should like to explain a little more what I mean by that.

Mr. TOWNSEND. Did I not understand you to say that you thought you would have to have a valuation in order to fix just and reasonable rates?

Mr. BUCKLAND. No, sir; I did not say that.

Mr. TOWNSEND. Oh, was that Senator Faulkner?

Mr. BUCKLAND. I think seldom, if ever, does a valuation have anything whatever to do with the rate.

Mr. STEVENS. What does the Supreme Court say about it?

Mr. BUCKLAND. It says that it is only one of a whole lot of other things that have to do with the fixing of rates.

Mr. STEVENS. But it is one?

Mr. BUCKLAND. It is one; but I say it seldom has anything important to do with fixing the rate. For instance, take this situation: (I speak of my own territory, but you gentlemen will appreciate it)——

Mr. TOWNSEND. Excuse me right there. Did you not say in the first place when you were naming the three things that were necessary for a railroad that it should be entitled to a return; that it should share profits between the shipper and the railroad?

Mr. BUCKLAND. Yes, sir.

Mr. TOWNSEND. And that in order to do that you must know the value of the property?

Mr. BUCKLAND. I did not say that; I said you must know the capitalization.

Mr. TOWNSEND. Oh.

Mr. BUCKLAND. The proper capitalization.

Mr. ADAMSON. A long road may actually cost \$100,000,000 and a shorter line may cost a great many millions less.

Mr. BUCKLAND. Yes.

Mr. ADAMSON. Yet if it is able to handle the business it is actually worth a great deal more than the other longer and more costly road, is it not?

Mr. BUCKLAND. No; I do not think it is. If it were, you would put out of business a lot of the communities in this country.

Mr. ADAMSON. But is it not the practical fact that if it commands the business it is worth more, although it costs a great deal less?

Mr. BUCKLAND. Let me show you how it works out practically. Here is a route from Boston to Chicago by way of the Boston and Albany, the New York Central, and the Lake Shore. It is a practically straight route. Probably it is very much shorter than the

other route of which I am going to speak, and it probably costs a great deal less. Its grades are much lower. Another route goes by way of the Boston and Maine, the Central Vermont, and the Grand Trunk, up through Montreal and down to Chicago, and reaches the same point. The grades are higher and it costs a great deal more. And yet of those two routes, the first-mentioned route commands a higher rate than the last-mentioned route.

Mr. ADAMSON. The short route?

Mr. BUCKLAND. The shorter route commands the higher rate; and the Boston and Maine is a differential route.

Mr. ADAMSON. And it gets there sooner?

Mr. BUCKLAND. Undoubtedly; but if you are going to fix your rate upon the basis of the valuation of your road——

Mr. ADAMSON. If it is shorter and gets there quicker, and can for that reason command the business, it is certainly more valuable.

Mr. BUCKLAND. Then you mean that you are going to value the so-called franchise or good will of the road?

Mr. ADAMSON. Is it not worth what it does and earns?

Mr. BUCKLAND. No; I do not think so.

Mr. ADAMSON. The policy of the road is, no matter how much it has watered its stocks and bonds, to try to make a certain rate of interest on the paper valuation. The policy of the Government is to rate it according to what it is worth, not necessarily what it cost.

Mr. BUCKLAND. Then if you get into that, the short-line road would be entitled to charge a great deal more than the long-line road would be in position to charge. Unless you make those rates substantially equal between competitive points, allowing for the differential——

Mr. ADAMSON. You will notice that I have never committed myself absolutely to the doctrine that a rate ought to depend on what a road is worth at all.

Mr. BUCKLAND. I did not suppose that any member of this committee had, and I do not think any gentleman who has examined the situation can; and that is the reason why I was only referring to that matter very briefly in connection with valuation.

Mr. ADAMSON. That is a circumstance.

Mr. BUCKLAND. I do not think the valuation of a road has any very important bearing upon the rate which that road should charge.

Mr. ADAMSON. It is a circumstance?

Mr. BUCKLAND. It is a circumstance; yes. I think it might be very valuable to find out how much water there might have been in the stock; and yet there is another question. Every man has to recognize that when a railroad goes into a new enterprise the people are not going to take the stock at par.

Mr. ADAMSON. I think it much more important that the jurisdiction, whether State or Federal, having physical possession of the actual road and rolling stock, unless it happens to be managed by good men, like yourself, having some respect for the rights of patrons, should see that it treats people and localities fairly, and without discrimination, regardless of the value of stock, bonds, or ownership.

Mr. BUCKLAND. That it treats people and towns fairly.

Mr. ADAMSON. Yes.

Mr. BUCKLAND. But not equally.

Mr. ADAMSON. I mean according to the circumstances.

Mr. BUCKLAND. Yes—well, I think we thoroughly agree.

Mr. ESCH. Do you know of what value State valuations have been, in the States where they have State valuations, to the commissions of those States in examining the question of reasonable rates?

Mr. BUCKLAND. No, sir; I do not. I only know what the United States Supreme Court has said upon the subject.

Mr. ESCH. You know that there are a few States—

Mr. BUCKLAND. I suppose Wisconsin has made a valuation, has it not?

Mr. ESCH. Wisconsin, Michigan, and Texas.

Mr. BUCKLAND. Yes, sir. I understood that in Wisconsin the effect was not to permit the rates to be lowered to the extent that the former governor of Wisconsin intended to lower them, or have them lowered, by legislation.

Mr. ESCH. I did not know whether you had any ideas on that subject.

Mr. BUCKLAND. I have no ideas on that subject, because I have not looked into the point. We made the valuation of our road entirely independent of any statutory obligation to do so.

Mr. ESCH. Was that the valuation made by Mr. Stevens?

Mr. BUCKLAND. By Mr. Stevens; yes.

Mr. ESCH. How did that valuation differ from the valuation at which the road was held by the officials prior to its making?

Mr. BUCKLAND. We had no valuation.

Mr. ESCH. You had none?

Mr. BUCKLAND. We had no basis of valuation excepting our inventory; and we had plowed in so much surplus on the thing that we really did not know where we were on the road. That is, we had put so much of our earnings into construction and into equipment that we did not exactly know where we were; and we wanted to get a valuation showing what the road was worth.

Mr. ESCH. Then, in your case, you found that valuation of value?

Mr. BUCKLAND. Of interest.

Mr. ESCH. Not of value?

Mr. BUCKLAND. I do not think of any particular value, except perhaps as an advertisement of how good a road we had. We found, for instance, that we had put \$15,000,000 more into the equipment than was charged on our books; and it had been simply operating earnings which had been put into equipment. It was not of any particular value to us.

Mr. TOWNSEND. How are you taxed down there—ad valorem or specifically?

Mr. BUCKLAND. I was hoping you would not raise that question, Mr. Townsend. [Laughter.] We are taxed on the market value of our stock and bonds, excepting in the State of Rhode Island, where we are taxed the same as anybody else is—on the physical value of our property.

Now, on this subject of passenger fares: I do not want to blow my own horn too much; but we put in a 2-cent rate on our road something like two years ago—one and a half or two years ago. I simply want to say that that was because our road has the largest passenger earnings of any of the systems in the country; and it is probably the only road in this country which could afford to put in

a 2-cent rate. Its earnings from passenger traffic are nearly \$30,000,000 a year. It could afford to put it in.

Mr. KENNEDY. After the 2-cent rate went into effect, how were your receipts affected?

Mr. BUCKLAND. They were increased.

Mr. KENNEDY. Do you not think that there would be a corresponding increase even in the sparsely settled communities by reason of a reduced rate?

Mr. BUCKLAND. There arrives a certain point—and that point I am not prepared to determine—where it does not pay.

Mr. KENNEDY. Of course the rate should never be below the actual cost of the service.

Mr. BUCKLAND. As I say, there comes a certain point where it does not pay. But take the case of a road that runs, as we do, 18 trains each way a day between Boston and New York, all of them very heavily loaded, and the stations an average of 2 or 3 miles apart, and the amount which we earn from passengers is sufficient to justify that; and the 2-cent rate encouraged travel.

Mr. ADAMSON. In order to do that the increase in the number of passengers must be sufficient to overcome the reduction in the rate?

Mr. BUCKLAND. Undoubtedly so. I want to say this simply for illustration: There must be some point somewhere where it is profitable to put in a 2-cent rate. That point ought to be determined by the Interstate Commerce Commission.

Mr. ADAMSON. I was just going to ask you this question, following my other question: That being the case, and it being recognized that there are some roads in some sections where a 2-cent rate probably would not pay, could not the Interstate Commerce Commission be trusted to determine in what particular cases a higher rate should be allowed?

Mr. BUCKLAND. Absolutely; and that is simply carrying out the theory which I have that the Interstate Commerce Commission, having the power to-day under the Hepburn Act, ought to be trusted to exercise that power.

Mr. TOWNSEND. But in order to reach the condition which you speak of, where the railroads are looking after the interests of the shippers, why do they not take up the matter themselves and reduce the rate without legislation, and without any suggestion from the Commission?

Mr. BUCKLAND. Mr. Townsend, a railroad company is not any different from any other collection of individuals.

Mr. TOWNSEND. I did not suppose it was until I heard your testimony.

Mr. BUCKLAND. They are not; and some of them are wise and some of them are foolish. All wisdom does not reside in our road, and all foolishness does not reside in the others. Most of the railroads of this country, Mr. Townsend, are trying to do right, just as surely as you live.

Mr. TOWNSEND. I think that is true.

Mr. BUCKLAND. It is very nearly true, and most of the railroads of this country, if they are given a chance, are coming around to the idea which I speak of, that the prosperity of the railroad is absolutely correlative to the prosperity of the shipper.

Mr. ADAMSON. I think there is a great deal of truth in that, and as there are some representatives here of the Southern Railroad, which runs through my district, I want to say that what I have said heretofore did not apply to that company, that I have never called upon them to remedy anything complained of by my constituents, in my district, without receiving courteous consideration, and usually substantial relief was afforded.

Mr. BUCKLAND. The trouble, Mr. Townsend, is that it takes a little time for this thing to work itself out, and the railroads, prior to the passage of the Hepburn Act, were running wild and free and loose, and did not realize, I think (I may be against all my brethren here), their full obligations to the public. I do not think they realized the wise thing to do and the broad thing to do. On the other hand, I think the public has gone to the other extreme, and wherever they see a railroad head they hit it. The thing to do is to let the matter work itself out through this Commission. Do not attempt to restrain the rates. And, while I am on that point, do not attempt to prescribe the absolute number of miles per day that cars shall be run in this country. The New Haven road may be able to run its cars 60 miles an hour, and some single-track road in the mountains or in the South may not be able to run its cars 10 miles an hour.

Mr. ADAMSON. Is it not always the case, when people get mad and undertake to make reprisals, that they go too far?

Mr. BUCKLAND. I think that is true.

Mr. ADAMSON. How would you feel if you lived in a town, and had all you had invested in it, and 1,000 of your fellow-citizens were in the same situation, and it was half way between two considerable places, and the railroad on which you depended should take occasion all at once to take the trains off or break necessary connections, and let somebody else prosper at your expense by hauling through your town to them cheaper? Those are the things that make people mad with the railroads; and when the people get mad with the railroads they are rather excusable if they hit a few heads anywhere they see them.

Mr. BUCKLAND. There is no question about that; it is the history of the world over and over again. I think you have the means to stop that sort of thing.

Mr. ADAMSON. When a row comes up in that way and those people demand redress and demand legislation, it is not right, then, for the railroad men to turn around and say they are being persecuted, and it is the politicians that are persecuting them, is it?

Mr. BUCKLAND. Not at all. But I do say that where there is one wicked railroad you should not hit a dozen that are not wicked. In other words, I do not think that because there is a skunk under the barn you have to burn all the barns in the neighborhood.

Mr. ESCH. Or burn that barn.

Mr. BUCKLAND. Or burn that barn. Get the skunk out.

Mr. ADAMSON. It seems to me as though a skunk could be located. [Laughter.]

Mr. BUCKLAND. It seems to me, on the very point you speak of, that the Interstate Commerce Commission has already decided a case in the Indian Territory in reference to the refusal of a railroad company to stop trains at a station. You have that tribunal. It is a good tribunal. It is getting bigger and broader every day. It is

getting the confidence of the railroads, and it is getting the confidence of the shippers. And I say leave the authority there with them. Do not interfere with their action. Let them get the railroads and shippers together.

Mr. TOWNSEND. Now, will you answer directly this question? In the case of the Fulton bill, which you speak about, the complaint is made, as you know, that here is a rate that has been in existence for a great many years—

Mr. BUCKLAND. The lumber rate in Oregon, for instance.

Mr. TOWNSEND. And the railroads have suddenly concluded to change it and make a radical change in the rate, and in thirty days it goes into effect. What is the remedy to the shipper there? Suppose there is a case of that kind—because I think that it must be admitted that there are cases arising where that is a grievance.

Mr. BUCKLAND. Mr. Townsend, I will go a little further than you have gone, because I am pretty familiar with that case. I have talked it over with traffic people, although my road is not at all interested in it. I think there is no question whatever in the minds of the lumbermen as well as of the railroads themselves that the 20-cent rate that they had in effect was altogether too low. I think there is not any doubt in the mind of anybody that the 40-cent rate to which they raised it was a reasonable rate in itself. But the evil of the lumber case was that they absolutely destroyed industries which had been led to suppose that they might rely upon that rate. In the destruction of those industries the railroads get no revenue. When they tie those industries up they get no lumber to carry.

Mr. TOWNSEND. But the lumber is there, and has to be carried.

Mr. BUCKLAND. The lumber will be taken out at some time or other, and they will take it out when the rate comes down to where it can be taken out.

Mr. CUSHMAN. Or when the lumber becomes worth enough.

Mr. BUCKLAND. Or when the lumber becomes worth enough, as it looks as if it might. But the evil of that lumber case, it seems to me, was this (I am getting a little beyond my depth now, because I do not know whether I am absolutely correct in these statements or not): That the railroads gave the shippers the right to rely upon the 20-cent rate. As I remember it, they put in the 20-cent rate, and then, at one time in the past, raised it to 40 cents, and then recognized their mistake and put it back to 20 cents again, and then raised it to 40 cents. So that by the two instances where they had made the 20-cent rate they had given those industries the right to rely upon that rate as a part of the cost of their product. It is only business that where they have been given a right to rely upon a thing of that sort, that reliance ought not to be betrayed. That is not theory; that is not altruism; it is absolutely just common every-day business. That was where the railroads made the mistake, and I think that is where they will be corrected by the Interstate Commerce Commission.

Mr. TOWNSEND. How will they correct them? Do you think the Interstate Commerce Commission will hold that the rate, after it went into effect, was too high under the circumstances? But what remedy was there, or ought there to be, during the thirty days prior to the taking effect of the rate in such a case as that? Ought there to be any remedy?

Mr. BUCKLAND. Mr. Townsend, if, with the work which the Interstate Commerce Commission have, they could take up and determine justly every proposed rate before it goes into effect, I should say that there might be a considerable reason for giving that power.

Mr. TOWNSEND. I am not betraying any confidence here when I say that I have talked with several members of the Commission, and one a very prominent member, and have been told that among the very many rates that have been raised, some of them—not all of them, but some of them—on their face would warrant the Commission, without making any extensive investigation, in suspending the operation of that rate until a full hearing could be had on it. In other cases they say they would not want to be forced to suspend a rate, because they would not have time enough to investigate, and the facts would be too meager.

Mr. BUCKLAND. I am surprised that the Commission would endeavor to suspend any rate without a hearing.

Mr. STEVENS. Then, if that statement of Mr. Townsend's be true, if the rate were unreasonable, and the railroad gave notice to put it into effect, and that condition existed, any shipper who could make a complaint in about thirty or forty days would have a complete remedy, would he not?

Mr. BUCKLAND. I do not think he would, with the business which the Commission has before it.

Mr. STEVENS. I know; but if a rate is unreasonable on its face, and the railroad gives a notice of thirty days to put it into effect, some shipper is going to complain or file his complaint; and on that very showing, if the rate is unreasonable on its face, the Commission does not have to wait any further, does it, under the present law?

Mr. TOWNSEND. After it goes into effect?

Mr. STEVENS. After it goes into effect.

Mr. BUCKLAND. Oh, no; not after it goes into effect.

Mr. STEVENS. So that he would only have to wait about thirty or forty days to have a complete remedy?

Mr. BUCKLAND. Yes, sir.

Mr. TOWNSEND. But what is going to happen to the man's business in the meantime?

Mr. BUCKLAND. I do not think a man's business is absolutely going to go to pieces in thirty days.

Mr. TOWNSEND. Do you not think the railroad which endured that rate for so many years could afford to stand that better than the shipper could?

Mr. BUCKLAND. That question was asked once before. No; I do not think it necessarily could. The question of expense on the part of the railroad is just the same as the question of expense on the part of a shipper. A shipper can raise the price of his commodity. The railroad's judgment should be trusted to raise the price of its commodity. There may be increases in the wages of the trainmen, increases in the wages of clerks, increases in the price of coal; and as I look over my operating reports, I find that there have been increases in all of them in the last year and a half.

Mr. TOWNSEND. Yes; but I understand your theory to be that railroads themselves ought not to do this without consulting the shipper?

Mr. BUCKLAND. I think myself that that should be done. I should like to see it done; and I should be very glad if the Sherman Act were so amended that it could be done in the matter of the traffic associations, so that there could be more or less of a clearing-house there.

Mr. TOWNSEND. Would not that apply with equal force to the argument that they should consult the Commission, which is composed of such honorable men as you have suggested, and men of experience in this kind of business?

Mr. BUCKLAND. I do not believe that the Commission would be competent to pass upon that, excepting upon a hearing and the evidence. I do not think they could do so.

Mr. TOWNSEND. I confess that I have had my notions changed from those I originally had when I proposed that any rate could be suspended. I agree, now, that it ought to be discretionary for the Commission to say whether a rate ought to be suspended or not.

Mr. BUCKLAND. You will find this, Mr. Townsend, I think, as you go into the matter: That the question of what is a reasonable rate will never be determined by any theory. It will not be determined by any rule of law. It will be determined by investigating the facts surrounding the particular rate, in every case, as to whether or not it fairly divides the prosperity of the railroad and the shipper. The United States Supreme Court has never come any closer to that as a final analysis of its determination of what a reasonable rate is. It has brought in these various things that go to make up a reasonable rate; but in the last analysis the reasonableness of a rate is the charging of what will promote the traffic, which has been usually termed "charging what the traffic will bear," and has been used against the railroad, as meaning charging all that they can get out of the traffic.

Mr. STEVENS. That is not quite accurate, is it, Mr. Buckland—to say that a reasonable rate is a rate that could be used to promote the traffic? Should it not have a further amendment—"which ought to be promoted?"

Mr. BUCKLAND. Well, yes.

Mr. STEVENS. Should not that limitation be made?

Mr. BUCKLAND. I do not suppose you would give a rate so as to encourage the raising of oranges in New York.

Mr. STEVENS. But it is not done? Have not the railroads done that very thing? Have they not frequently given unreasonably low rates for the purpose of promoting traffic that ought not to be promoted?

Mr. BUCKLAND. I think they have.

Mr. STEVENS. We do not want that.

Mr. BUCKLAND. Then you will have to give the Interstate Commerce Commission the right to say that a rate is unreasonably low as well as that it is unreasonably high. You have not done that yet. You have given them a right to fix a maximum rate, but you have not given them a right to fix a minimum rate.

Mr. ESCH. We assume that the railroad would put up the rate it deemed reasonable and profitable to itself.

Mr. STEVENS. Yes; that the question will be gradually eliminated under the friction, or, rather, the force, of the law.

Mr. BUCKLAND. Do you mean as to the question of minimum rates?

Mr. STEVENS. Yes.

Mr. BUCKLAND. As we are more or less of a monopoly in our territory, I can say only how it works with us. Every little fellow that gets a cheap steamboat will come up into our territory and will put down the rates for which he can afford to carry freight for the time being in that territory to, perhaps, 75 or 80 per cent of the rates which we charge. He goes along there until he finally becomes bankrupt and goes out of business; and I think that that man is carrying freight at altogether too low a rate. I do not think he ought to be permitted to come in and carry at a rate below what is compensatory, merely for the purpose of cutting down a competitor's business.

Mr. KENNEDY. Then you do not think that a railroad ought to be permitted, at a point on the Mississippi River, to compete with the steamboats on the river by making rates so low that it will put the steamboat out of business, either; do you?

Mr. BUCKLAND. No; I should say that if you are going to carry the minimum rates to that extent, you would have to protect your water carriers as well as your rail carriers.

Mr. KENNEDY. Do not the railroads often put those little steamboat fellows out of business and into bankruptcy by competing with them in the rates?

Mr. BUCKLAND. Very likely; and the probabilities are that if they did not do that, they would put a steamboat on themselves and own it.

Mr. STEVENS. As a matter of fact, Mr. Buckland, is it not the competition of facilities rather than of rates that puts the steamboats out of business?

Mr. BUCKLAND. No; I do not think so, in New England. I think that in New England it is the fact that the independent steamboat lines do not receive rail connections, and therefore are practically limited in their traffic to what they can get from port to port, in connection with the low rates which they take.

Mr. ADAMSON. There are a great many instances, however, where that is true, is it not—that facilities do command a differential in favor of the railroad?

Mr. BUCKLAND. Yes; but in New England the differential is generally the other way.

Mr. ESCH. You operate steamship lines also, do you?

Mr. BUCKLAND. Yes; we have about eighteen steamboats.

Mr. ESCH. Does not that practically shut off competition from independent steamship lines?

Mr. BUCKLAND. No; not at all. They come up and carry for less than we will. They will carry for 2 cents a hundred on cotton piece goods less than we will.

Mr. PAULDING. How about the Enterprise Line?

Mr. BUCKLAND. The Enterprise Line is not in existence any longer, but it was for a time. They carried cotton piece goods from Fall River to New York for 8 cents a hundred, as against our 10 cents a hundred by steamer. But the steamboat conditions in New England is rather different, for the reason that the steamboat is preferred as a freight carrier to the rail, because you get a delivery in lower New York the following morning, at all events, and you are not blocked by reason of any conditions which may happen in your yards

and terminals. So that that is hardly a fair representative of steamboat competition.

On this subject of passenger fares, there was discussion here on the question of the universal mileage book. I recollect the discussion very well, and some rather startling figures which were given by the president of the Travelers' Protective Association.

Mr. STEVENS. Do you care to answer the proposition of Judge Benjamin Franklin?

Mr. BUCKLAND. I do not care to go into that matter, excepting to say that I should not care to be a party to an interchangeable mileage book if I did not know the responsibility of the railroad which issued it.

Mr. Townsend brought up the question in reference to safety appliances. I think there is another side to that question which has not been brought before this committee; and while it may not be germane to this discussion, I should like to refer the committee to the articles which have been written in the December and January Atlantic from a railroad employee's side of the safety-appliance law and the rules applying to the protection of employees. If the committee will permit it, I should be very glad indeed to put them into the report here.

Mr. STEVENS. I think that should be done.

Mr. ESCH. You have that privilege.

(The paper referred to will be found at the end of Mr. Buckland's remarks.)

Mr. BUCKLAND. This article was written by J. O. Fagan, a telegraph operator in the employ of the Boston and Maine Railroad. The article itself is a remarkable article, not only for the English in which it is couched, but also for the ideas which it conveys. I happen to know that upon its being brought to the attention of our president he sent for Mr. Fagan, and Mr. Fagan came down here and discussed the matter with him.

Mr. Fagan says that while it is highly desirable that these railroads should adopt every reasonable safety appliance, it is equally desirable that the employees should utilize those appliances when they get them; and that one of the troubles which has not been adverted to in the discussion of these safety appliances is the utter disregard on the part of employees of the appliances which are provided for them, and of the rules under which they work. The fact that "familiarity breeds contempt," causes a large number of these deaths concerning which Mr. Gompers and Mr. Fuller have from time to time talked, and it is only fair that that side of the thing should be looked at.

I happen to know, having had some experience in operating, that there is a positive rule on the railroads that a blue flag by day and a blue light by night on the end of a train or a car indicates that there are repairers at work under that car, and that under no circumstances shall any locomotive touch such a car. I have tried a good many cases and examined the witnesses on accidents that happened to repairers under cars; and I never yet have found a repairer who would take the trouble to put his blue flag on the end of a car by day, or his blue light by night.

Mr. PAULDING. That has been my experience.

Mr. BUCKLAND. I think that is the experience of every man that has had to do with it. They will not do it. In the old days, before

the automatic coupler was introduced, the men thought it was womanish on their part to use a coupling stick, which was provided for them by the railroads. They threw it away. I remember one case of a man who was injured while kicking some cars into a siding. His brake would not work, and he was thrown off the car and was injured. He came before me, and I asked him why he did not get down on the car when he saw that his brake would not work and saw what was going to happen. He said, "I would be a nice fellow to sit down on a car when it went in. I always stand up on my cars when I kick them in."

It is the "familiarity which breeds contempt;" and that is the side of the picture which ought to be presented to you gentlemen—the fact that a yellow signal means "Your train under control," just as a red signal means "Stop," and that the instances are many where these various accidents have occurred, and these men have been killed or injured, where they have disregarded the caution signals, and have not brought their train under control, and have done absolutely nothing to stop their train until they have come right into their red flag. But those are the facts. Mr. Fagan sets them forth, and sets them forth very frankly.

Mr. ESCH. That would not apply, however, to grab irons and hand holds and running boards?

Mr. BUCKLAND. Mr. Esch, I am glad you brought that matter up, because I had almost forgotten it. I have tried several cases of grab irons loosening. In one case I proved absolutely that the grab iron, which was put in by lag screws, was loosened by the man himself. When he was found on the ground he had this grab iron in his hand, and the lag screws were a short distance off, but the wood was perfectly sound. He claimed that he had suffered concussion of the spine; and he was about to get a pretty comfortable verdict, when we rather upset the whole situation by showing the conspiracy into which he had entered in order to defraud us.

Mr. ESCH. Do you think that that is of such common occurrence that we should refuse to legislate with reference to it?

Mr. BUCKLAND. No; I do not think it is of such common occurrence, but I think it is something which you have got to look into in accepting these reports of deaths and injuries to workmen as being necessarily due to the negligence of the employer. That is not fair. You must examine the circumstances surrounding each case and determine whether or not it was due to negligence of the employer. I believe in perfect running boards. I believe in perfect grab irons. I heard the discussion before this committee by Mr. Moseley on the question as to where the grab irons should be—whether they should be on the end or whether they should be on the side of the car, or whether the ladders should be on the end or the side of the car. I believe that there should be some standard fixed in that respect, and I do not think that a railroad should object to it. But I do not want you to think, in passing, that necessarily, because there have been imperfect grab irons and imperfect ladders, the railroads themselves have been to blame for it in all instances. We are apt to take those results and reason back to what we regard as the causes without definitely determining what the causes are.

I have taken up so much of your time that I do not think I will go any further, gentlemen. Mr. Paulding is here, prepared, I think, to address you on some of the bills that are before you.

(The article referred to by Mr. Buckland in the foregoing statement, which he was given permission to have printed as part of his remarks, is as follows:)

CONFESSIONS OF A RAILROAD SIGNALMAN.

[By J. O. FAGAN.]

Money, brains, and intelligent labor form the combination that is attempting to solve the problem of safe and expeditious transportation on American railroads. In order to secure the desired result no expenditure, either of effort or of treasure, is considered too extravagant. So far as concerns speed and comfort, the conditions at the present day leave little to be asked for; but when we come to take account of the human lives that have paid toll to American systems of railroading, we can not avoid the conclusion that something must be fundamentally wrong in the methods of handling the traffic.

To account for the unsatisfactory state of affairs there are various popular excuses and explanations. Discussions in regard to block signals, tired employees, faulty rules, and so forth, are seemingly as endless as, up to date, they have proved fruitless. For the most part these discussions are being carried on by professors and students of economic conditions and by clever collectors of statistics, but the men who know all the details of railroad life, the men who pull the signals and handle the trains that are concerned in the trouble, have yet to be heard from.

However, regardless of the nature or value of the discussion, the fact remains that we railroad men still continue in the same blind rut and there is no perceptible improvement in efficiency. Managers and superintendents appear to be helpless in the matter. They are evidently unable to stem the tide of preventable casualties.

The story of one accident is the story of them all. There is a smash up. Property is destroyed, perhaps passengers are hurt. The superintendent at once starts an investigation. It is practically secret. Not a word in regard to it is allowed to leak out. After a while a decision is arrived at and a verdict is rendered, in secret. Then discipline is administered. A private communication containing verdict and penalty is sent to the accused party. This, of course, he keeps to himself, and the incident is closed.

But before long another employee, in utter ignorance of the first man's blunder, commits the same mistake. Both of these wrecks may have been serious, perhaps with loss of life, but that makes no difference. Our traditions and ancient habits have not been interfered with and the bills have been paid. Such is discipline in the dark. Great indeed is secrecy.

Yet it is useless to question either the ability or the integrity of superintendents. As a rule they have risen from the ranks and are thoroughly capable and conscientious. Every avoidable accident is a reflection on their management, and therefore it can be taken for granted that they render the best service possible under the circumstances. But unfortunately they are beset on all sides with obstacles and difficulties. What they would like to do, even in the matter of secrecy and discipline, must frequently wait upon what they are able to do. Time was when an offending employee could be discharged on the spot, without appeal. To-day he claims a hearing. A brother employee, an expert on railroad law and precedent, stands at his elbow as prompter and assistant. In this way, as we railroad men figure it out, the "law's delay" puts a curb on the "insolence of office." Thus the initiative of a superintendent is held in restraint, and management by means of schedules and agreements takes the place of personal direction, while over all hovers the watchful eye of the grievance committee. Meanwhile, we, the employees, look on, watching the game.

When people are killed, when property is wrecked, we have nothing to say. It is for the management to figure out reasons and remedies. Of course, as individuals we are interested and sorry when accidents happen, but personally we do not bettir ourselves nor do we call upon our organizations to bestir themselves in the matter. We simply stand pat on our rights. If a prominent railroad man is questioned on the subject of railroad accidents he will shrug his shoulders and say, "human nature." So far as he is concerned railroad men are to be protected, not criticised. If you turn to the management your errand will be equally fruitless. The superintendent will have little to say. Generally speaking, he has no fault to find with the men, and the men have little fault to find with him. This seems to be a tacit understanding in the interests of harmony. It being impossible to move without treading on somebody's toes, by all means let us remain motionless. As for the public interests, they must shift for themselves. Consequently, in place of earnest cooperation in the interests of efficiency and improved service, there is something in the nature of a friendly deadlock between men and management.

Nevertheless, in spite of many appearances to the contrary, the problem of the efficient and safe running of trains is a very simple one. Fundamentally it is not a question of rules or safety devices, but of personal conduct and habits of thought.

In everyday life when a man fails to make a satisfactory score with a first-class gun we do not place the blame on the weapon. If we desire greater efficiency in marksmanship we direct our attention to the man. But in the railroad business such commonplace logic does not seem to apply. When a man violates an unmistakable rule or runs a signal with disastrous results, there immediately arises on all sides a peremptory demand for a different kind of rule or an improved signal. Public opinion, with little understanding of the issues at stake, has a constant tendency to blame systems and managements. Even the railroad commissioners, agreeing with or responsive to this public sentiment, almost invariably recommend improvements along these lines. In this way for many years attention has been concentrated upon the machinery of management, its rules, and safety appliances, and the personality of the men has been side-tracked. The injurious effects of this policy and the manner in which all hands have conspired to obliterate personality from the railroad business will be evident from the following illustration:

A short time ago, in the vicinity of Boston, an express train telescoped an accommodation passenger train. The track in question was protected by no less than four cautionary rules and signals. In this way the express train received four distinct and emphatic intimations that a train was on the block ahead of it. With the slightest attention to the rules or to the dictates of common sense the protection was sufficient, yet the train ahead was telescoped as it was pulling out of a station. Of course, in placing the responsibility, the plain and real issue in this case was the question whether the express train was or was not running slowly and with extreme caution, as called for by the rules. In order to determine whether the rules and signals were sufficient to prevent a collision it was surely proper and reasonable to ascertain whether, on this occasion, they were obeyed. But the railroad commissioners, after an exhaustive investigation, took a different view of the matter. Their finding or verdict, in their own words, was as follows:

"It is not necessary to determine whether the engineman did or did not exercise proper caution; the significant fact is that the discretion actually used led to disastrous results. Under the conditions the signal should have been red."

The harmfulness of this decision will at once be apparent. It cuts the personality out of the business at points where obedience to the rules is the vital issue. Green signals or red signals are equally valueless if ducks and drakes can be played with the rules in regard to them. A decision like this one is confusing and demoralizing to conscientious railroad men, and it converts the management and discipline of a railroad into a thing of shreds and patches.

To emphasize this point it should be added that another collision of a similar nature took place about the same time on the same railroad. An express passenger train approached a fixed signal which indicated caution. The engineman, on the lookout, but with the caution up his sleeve, kept on his way without any reduction in speed. A moment later he encountered a red fusee which called for an absolute stop. But it was too late. Neither the fusee nor the flagman frantically waving his red flag availed to arrest the momentum of the flyer, which dashed into the rear of another passenger train standing at a station.

Now, with all deference to the railroad commissioners, the "significant facts" in these accidents are the personal conduct of the employees and not the nature of the signals or the wording of the rules.

Of course, taking a wider view of preventable accidents, it is always an easy matter to divide the responsibility for them between the men and the management. This is the usual and popular method of treating the subject. But the idea, reasonable at times, has been overworked, and has now degenerated into a principle that responsibility should always be divided. Consequently, while we are busy adjusting the division, we frequently lose sight of the real issues, and the offenders are allowed to escape.

Fundamentally then, it must be confessed, we railroad men are to blame for these preventable accidents. Most of the trouble can be directly traced to our own personal behavior—that is to say, to our conduct and habits of thought as railroad men. This is by no means a reflection on our character as sympathetic and reasonable human beings. Our intentions are all right, but our training in the railroad business has been all wrong.

But it is of little use to talk or write about personality in the abstract. As practical men dealing with a practical topic, we must follow the railroad man out on the road, we must watch him at his work, and we must take notice of the common sense, the caution, and the good judgment, or otherwise, which he habitually displays in the execution of his duties. Then, and not until then, can we expect to become qualified to place our opinions or conclusions on record.

Now, the regulations relating to the running and protection of trains are very similar on all railroads, and therefore the following rule, taken from one of our current working time-tables, may be looked upon as thoroughly representative:

"A freight train must not leave a station to follow a passenger train until five-minute after the departure of said passenger train."

To any ordinary thinker this rule will appear to be plain, positive, and for the most part necessary. Yet as a matter of fact no attention whatever is paid to it either by enginemen, by conductors, or for that matter by superintendents. Its violation has been the cause of collisions and loss of life, but that does not seem to bother us, for we continue to disregard it. Let us take another illustration.

At the point where the writer has been employed for many years there is a junction of four-track and two-track systems. The rule for the handling of trains at this point is as follows:

"All trains will approach and enter upon four-track section under complete control."

There is nothing misleading or uncertain about this rule. The instructions to enginemen are positive. The tower men at these points understand how necessary and important this rule is. Besides, it is the written result of the experience of the officials. Nevertheless, it is totally and consistently ignored by enginemen. But enginemen are not alone to blame. Conductors should at least be conversant with the rules. The railroad officials who ride on these trains might also very reasonably be expected to notice the persistent violation of regulations for which they themselves are responsible. Yet even the trains bearing the railroad commissioners will rush over the territory in question as fast as the wheels can turn. The conditions and the rules in this case are practically the same as were those at Salisbury, England, at the time of the recent disaster in that city.

Now as it seems to me, the all-important facts in these cases do not relate to the nature of the rules, nor even to their nonenforcement, but to the downright neglect of railroad men to do as they are told. For, granted observance of them, all other questions in regard to the rules dissolve into thin air.

Unfortunately, the rules I have quoted and the interpretation put upon them by railroad men can not be taken as examples standing alone, for they are merely illustrations of a principle that covers the whole cautionary field in our railroads. In some way we have got it into our heads that these rules are permissive, not positive. This permissive principle means the exercise of our own judgment according to circumstances, regardless of the rule. Acting under the influence of this principle, the flagman protects his train to the very letter of the rule when it is manifestly necessary, but when, in his opinion, it is not, he takes chances. In this way he forms a habit of using his own judgment in regard to a positive rule. Sooner or later this means a preventable accident.

The engineman encounters a single torpedo. According to his rules, he should bring his train to a full stop. But as he happens to have a clear track for a mile ahead of him he keeps on. He, too, forms a habit which has to be reckoned with some day.

Again, all trainmen understand that an express train has no business to run past a station while accommodation trains are discharging passengers. It is by no means an uncommon occurrence, however, to see an express train disregard these positive instructions, on the strength of hand motions given by trainmen on the accommodation train to the effect that they are about to start and that the way is safe and clear for the flyer. Yet in this manner accidents happen, and passengers from the accommodation are always likely to be caught in a trap between the trains.

But the dangerous and widespread effects of the permissive principle applied to important rules will be appreciated to the full when we study the interpretation which railroad men in general are in the habit of applying to the word caution.

On all railroads there are certain fixed signals for the guidance and information of employees. When caution is called for, the light is usually green and the semaphore horizontal. Now, as the writer looks at it, when any signal indicates caution, it is not to be looked upon as a permissive or conditional signal to be interpreted at will by different enginemen. According to the rules and to common sense when a train, at the time a cautionary signal is sighted, is running 30 or 40 miles an hour, it calls for a positive and not a theoretical reduction in speed. The cautionary signal is not merely a piece of information to be stowed away in the brain of the enginemen to be utilized when a rear end or a broken rail is sighted.

Although for a number of years the inflexible enforcement of the rules relating to these cautionary signals has been advocated, yet to-day train after train will run past these semaphores and green lights without any reduction in speed, provided the track ahead of them is seen to be clear.

Here we tackle the very heart of the matter, for in so far as the rules and common sense are concerned, it should not make a particle of difference to the engineman whether

the track ahead is or is not known to be clear of trains; his instructions call for cautious running, and by no possible interpretation or juggling with words can cautious running, or running under control, be taken to mean running at full speed. Yet in the way I have indicated the cancer of a very dangerous habit has been allowed to grow into the American system of managing trains. This wrong interpretation of the word caution by enginemen and others has without a shadow of doubt during the past few years cost the corporations thousands upon thousands of dollars and multitudes of human lives. For if railroad managers labor under the delusion that enginemen can run cautiously at full speed when the track is clear, and avoid disaster when from unforeseen reasons another train happens to be on the same section, they are very much mistaken.

Practically speaking, then, the permissive principle covers the whole field of railroad life and is a constant menace alike to the interests of the corporations and to those of the traveling public. As a matter of fact, we, the employees, are bigger than the rules. According to our way of thinking it is not alone necessary that a rule should be plain and sound from a general standpoint, but its downright meaning and necessity must also be evident in each and every particular instance. If it fails to stand this test, we consider ourselves at liberty to use our judgment in regard to it.

Illustrations of the danger that lurks in this permissive principle can be multiplied indefinitely. But, after all, it is only a link in the chain, for there are other features in the personality of railroad men that call for serious attention.

The other day, within a few miles of Boston, an express passenger train approached a railroad crossing at grade. For some reason the gate tender was negligent and failed to lower the gates. By reason of just such negligence, teams are frequently struck and lives are lost at these crossings. On all railroads the rules are quite plain and unmistakable in regard to such matters. It is the duty of the engineman to report the incident to the management. As a matter of fact, on this particular occasion the engineman failed to do so. He failed to appreciate the fact that the safety of the public at these crossings is altogether dependent upon the strict observance of the rules. He had scruples and emotional objections, perhaps, to reporting this gate tender, and rather than do so he took all the chances in connection therewith, chief among which is the simple fact that on a railroad unchecked negligence can be depended upon to breed disaster.

That railroad men in general are either indifferent to or ignorant of the importance of the above fundamental fact will be made still clearer by another illustration. On September 16, 1907, that is, on the day following the disaster at West Canaan, N. H., the writer was a witness of the violation of two most important rules by a number of enginemen, conductors, and brakemen. A switch leading from the west to the east-bound main lines was left open while an express passenger train was passing inward bound. A freight train was on the west-bound track waiting to back over. Two minutes later, with his train only half way in to clear the main line, the engineman on the freight whistled in his flagman in the face of an accommodation passenger train which had followed the express. From beginning to end, on the permissive principle, it was a perfectly safe transaction, for there was a mile of straight track in both directions; but the rules for the running of the trains and for the safety of the public were violated. The witnesses were seven or eight veteran railroad men, who looked upon the affair as perfectly proper and justifiable under the circumstances. It never entered the heads of these men that the affair should be reported to the management. That some of the best men in the service should behave in this way, as it were in the very shadow of the accident at West Canaan, is almost inconceivable. Of course, if these incidents stood by themselves their significance might be comparatively trifling; but as a matter of fact they are illustrations of a condition which is thoroughly typical of American railroads. This condition or situation may be briefly yet correctly outlined as follows:

There is practically no out-on-the-road supervision on American railroads.

Railroad managers depend upon the reports of employees for information in regard to violations of rules. But employees do not, and can not be compelled to, report their associates, consequently negligence of all kinds is practically unchecked.

Finally, unchecked negligence can be shown to be the root and direct cause of nearly all preventable accidents, and loss of life therefrom, on American railroads.

Here we have a conclusion worth looking into. At a glance, we perceive that negligence is the prime and fundamental fact. It is the direct cause of the trouble. The fact that the negligence is unchecked is important, yet secondary. It should be treated as a separate issue and it must stand or fall on its own merits.

But our conclusion that accidents result in almost all cases from unchecked negligence should be supported by evidence and proof. For examples in support of it, let us take two of the most disastrous wrecks in the history of New England railroads:

On November 26, 1905, at Baker Bridge in Lincoln, Mass., 17 people were killed and 30 injured. An express passenger train was following an accommodation train, which was somewhat late. Cautionary signals calling for reduced speed and careful running were passed at intervals by the express train, but, according to the evidence, the engineman paid no attention to them; hence the accident. Now, the habitual negligence in regard to these cautionary signals was a matter of common knowledge. In fact, attention was called to the matter both before and after the accident by the writer. The unchecked negligence in this particular case was therefore directly responsible for the accident and the loss of life.

Again, on September 15, 1907, at West Canaan, N. H., 25 people were killed and 40 injured. The unchecked negligence in this case is by no means so striking as in the previous example, and yet the evidence pointing in that direction is quite as significant. A mistake occurred in the transmission of an important train order. This mistake was the direct cause of the accident. For various reasons it was impossible to say by whom the mistake was made.

Now, let us turn to our book of rules and take note of the following instructions to train dispatchers and operators: "In transmitting messages write slowly and firmly," etc.

With all proper consideration for hard-worked and conscientious train dispatchers, I am compelled to confess that train orders are seldom if ever sent "slowly and firmly." Operators will bear me out in the statement that orders are transmitted by dispatchers as fast as the men can handle them. That is to say, between veterans in the business they are rattled off at the highest limit of speed. The men concerned in the accident at West Canaan were veterans. Had the man at West Canaan been a "plug;" that is, a green hand, in all probability the accident would not have occurred. While, of course, this is merely a supposition, yet the fact remains that the men would have been transmitting slowly and firmly, and the chances for a mistake would have been reduced to a minimum.

I thoroughly understand and appreciate the difficulties with which the train dispatcher has to contend. I am quite aware that he is called upon to handle trains with the utmost dispatch; nevertheless, I insist that, in order to reduce chances of accident to a minimum, train orders should in all cases be transmitted slowly and firmly. I stand by the rules. The issue is between speed and safety, and in all cases the latter should be given the right of way.

Thoughtful railroad men who understand the situation on the railroads at the present day are yet very slow in suggesting remedies. They say, "It is up to the management to enforce the rules." On the other hand, if a superintendent can be persuaded to express an opinion he will retort, "It is up to the men to obey the rules. They are plain enough and sufficient for the purpose, but we can not station a spy at every switch to make sure that the rules are obeyed. We have to depend on the personality and general intelligence of our employees."

It will, I think, be evident from the facts and conditions which we have been considering, that whatever secondary causes there may be for preventable railroad accidents, the trainmen themselves hold the key to the situation. They are at liberty to obey the rules, and thus solve the problem in the only way in which it ever can be solved. Or they can continue to place upon these rules a wrong interpretation, and thus evade their manifest meaning and purpose. As matters stand to-day between labor organizations and railroad managers, it is very doubtful if by any practical system of supervision or discipline the rules for the safe and efficient running of trains can in all cases and at all times be adequately enforced. Thus, the whole business resolves itself into a personal matter with us as conscientious railroad men. Singly and collectively it is up to us to do the square thing, if necessary, in spite of the management.

As the case stands to-day we railroad men are in a class by ourselves. We are well paid, well treated, well educated, and well organized. In all that pertains to our material well-being, we compare more than favorably with any other class of workers in the country; but considered as responsible individuals, intrusted with the care of railroad property and the safety of the traveling public, our records are very unsatisfactory. The truth of this conclusion is not open to question. We can not escape from the statistics and the figures, and day by day the evidence against us continues to accumulate.

There are many people who think that the intelligence of the twentieth-century railroad man can be depended upon to guard against the shortcomings to which I have called attention. On the contrary, I am inclined to think that the intellectual independence of railroad men is in itself a danger to be guarded against. Standing by itself, the statement that knowledge is power is a fallacy. Knowledge is only a means. Its benefit to anyone is always an open question. In other words, the secret of power is in the application of knowledge. Thus, when we analyze a modern railroad accident

we are forced to the conclusion that many railroad men take chances by reason of the supreme confidence which they possess in their own cleverness and ability to deal with an emergency, however sudden. 'This resourceful characteristic of Americans is a splendid thing from a general standpoint, but in the railroad business it has its stern limitations. Only too many of our accidents are illustrations, not of lack of knowledge or resource, but of the downright misapplication of these intellectual features. In some cases we find an oversupply of self-confidence, in others a disinclination to knuckle right down to the observance of plain and positive instruction. In such cases a man can not be called the fortunate possessor of intellectual advantages, but their manifest victim.

Railroad managers, therefore, sooner or later will come to understand that the one thing needed in the railroad business at the present day is to educate employees to appreciate the fact that successful and safe railroading in the future will have to depend, not upon the multiplication of safety devices or the reconstruction of rules, but upon the personal effort and conduct of conscientious, alert, and careful men.

Meanwhile thought counts and it is a good idea for practical railroad men to look into and study these problems, each according to his ability and the light that is in him.

The problem of safety in railroad travel has been discussed from widely differing points of view by many conscientious investigators. The methods of these writers in marshaling facts and drawing conclusions are usually identical. The formula consists of a variety of accidents, a variety of causes, and a variety of possible or proposed remedies. For results up to date we have a library of information, but not a suspicion of improvement in the record of preventable fatalities. Meanwhile in the public mind there is confusion of ideas and considerable doubt as to the practical outcome of all this discussion. This is a natural state of affairs, for the reason that the only factor in the situation which is constant and about which there is no difference of opinion is the impotency of railroad people in coping with the difficulties.

Now, after all that has been spoken and written on the subject of efficient and safe railroad service, the problem remains, as at the beginning, essentially personal, social, and ethical in its nature. Nearly all questions in regard to it must sooner or later be thought out in this direction by railroad employees and managers. We may continue to work over and reconstruct our rules and to multiply our safety devices until we compel trains to creep from station to station; yet the problem will remain unsolved, the needless and disgraceful sacrifice of life will continue, until trainmen, enginemen, and managers put their heads together and agree to adopt a new code of railroad morals. My meaning when I allude to railroad morals should be clearly understood.

On nearly all railroads a given rule is obeyed at one point and disregarded at another, on account of different sets of conditions. This conduct leads to accidents when men who have habitually disobeyed the regulations at points where such action is harmless undertake to behave in the same way under conditions when a strict observance of the rules is vitally important. Generally speaking, managers are cognizant of this state of affairs, and thus in a measure they are morally to blame for it; but I do not think that they realize the extent of the evil, for the reason that any organized out-of-door supervision is unknown, and thus the report of an accident—that is to say, the result of these practices—is usually the first and only information on the subject that reaches the manager's office. The blame for accidents that happen in this way can not be said to rest upon any particular class of employees or to depend upon their intelligence or length of service. Among the culprits you will find some of the oldest and most experienced men, as well as some of the greenest. This goes to show that the trouble is inherent in the system and a part of the everyday life and character of armies of railroad men.

But in a straightforward investigation of this nature it is particularly desirable to get hold of all the facts that can be used in any way to throw light on the situation, and there is only one method as yet untried for properly securing and emphasizing these facts. Let us call this the confessional method. In the hands of a competent witness it can be depended upon to furnish us with all the information necessary for a thorough comprehension of our subject. This confessional method has nothing to conceal. It has no ax to grind, no interests to protect. It is born of a heartfelt appreciation of the seriousness of the situation on our railroads. Mindful of the ever-increasing and lamentable loss of life caused by the unstudied indifference and negligence of employees, as well as by the blindness of the authorities to the real issues and dangers, it approaches and takes hold of the problem somewhat in the spirit of the King in Hamlet, when in an agony of remorseful retrospection he exclaimed, "Try what repentance can: what can it not?"

That there is an urgent call for this confessional method of supplying the facts in this railroad business is capable of easy demonstration. When an accident takes place on a railroad, some kind of an explanation or reason for its occurrence is immediately called for. Consequently there is a lining up of opposing interests. A certain

management has to be vindicated, certain employees to be defended. In the investigation that follows an array of facts, defensive and otherwise, is brought forward in the interests of the opposing parties; but evidence and facts that are likely to reflect on both men and management, and perhaps on the handling of the case or of other cases by the board of railroad commissioners, are studiously avoided. The facts that are suppressed in this way usually contain the heart of the whole business and are the very points in which the public is profoundly interested. An illustration in point will make this doubly clear.

About a year ago, in an accident near Troy, N. Y., 5 passengers were killed and many were injured. A special passenger train crashed into the rear of a regular passenger train. There is a sharp curve in the track a short distance above the scene of the collision. Had the special been handled carefully round this curve, instead of recklessly, the accident would not have occurred. Caution, of course, is necessary in running round sharp curves, and the rules on all roads are plain and emphatic on the subject. But the authorities who investigated this accident treated it as an isolated instance of individual carelessness. Within a period of six months these gentlemen are called upon to pass judgment on probably twenty wrecks, every one of them bearing the same earmarks of disobedience as this disaster near Troy, yet no one ever dreams of hunting up a common cause for dozens of accidents that are exactly similar and brought about in the same way. To be precise, this accident at Troy was the result of a habit. At a glance we perceive that the public is a hundred times more likely to be interested in the uprooting of such a bad habit as running recklessly round curves than it is in placing the responsibility or punishing the offender in any particular instance. Yet who ever heard of a verdict that placed the blame for an accident on a habit? The reasons for the oversight are obvious. A dangerous habit, long continued and unchecked, is a decided reflection on men and management, and, indeed, on the railroad commissioners, whose vigilance it has escaped, and consequently no evidence or facts in regard to these bad habits are ever permitted to find their way into investigations. It will be evident, therefore, that the confessional method can be profitably employed in supplying a few missing links in our knowledge of actual conditions and methods of operation on the railroads.

To begin with, it will be well to take note of an estimate, made after a careful study of the figures, that fully 85 per cent of the fatalities that occur on our railroads can be directly traced to the negligence of employees. Regardless of the accuracy of this estimate, it certainly points to a very serious state of affairs. In studying the nature of these accidents and the conditions under which they take place one can not help being impressed with the fact that almost every possible way in which trouble can occur on a railroad is foreseen and provided for by some rule or safety device. So carefully has the ground been studied and worked over that in every case of preventable accident it can almost be taken for granted that an employee is to blame. That is to say, the management of a railroad is always found to be impregably protected by the rules and regulations from any direct responsibility. But after all, this is only one side of the shield, for clearly the moral responsibility of a railroad manager can not be said to cease with the printing of a batch of rules or the erection of a system of signals. It is not only necessary that rules should be plain and sufficient in themselves to prevent accidents, it is also equally essential that reasonable and systematic efforts should be exerted to enforce them. On a railroad, as elsewhere, the means employed for the supervision of personal conduct and for the enforcement of necessary rules are all included in the term discipline. Without some organized and effective system of discipline no industrial establishment of any kind can be successfully administered. On railroads in particular the department of discipline is intimately related to the interests of the traveling public. Let us then examine in a practical manner the nature and methods of the discipline that is in force at the present day on what may be considered the most important railroad in New England. A little personal experience will throw the necessary light on the subject.

Sometime ago, happening to notice that important regulations were being habitually ignored by a certain class of employees, the writer called the attention of the management to the matter. In this way, from time to time, many cases of simple negligence, which had no serious consequences, were reported to superintendents. Thinking it all over, the writer finally became anxious to find out just what disposition was made of these reports. For it must be apparent to any thinking person that the practical value of any system of discipline must always depend upon the efforts that are put forth and the success that is achieved in checking and in preventing the repetition of these instances of what may be called trouble in the bud. The reports to which I refer were acknowledged by the management, and there the matter ended. But as I happened to be studying the subject at the time in a systematic manner, I was by no means satisfied with this abrupt conclusion. So I made an investigation on my own account, and easily discovered that practically all other interested employ-

ees were unaware of and had not been notified in regard to the violation of these rules because, as the men explained, nothing had happened. That is to say, it was necessary to hurt somebody or smash up a few carloads of freight before any efforts could be exerted according to the rules to put a stop to the negligence. This became very clear to me, when, upon making further inquiries, I was informed that the men had been disciplined to the full extent of the rules. Now, my object in the investigation was not to get at the nature or the amount of the discipline, but simply to be able to arrive at an estimate of its value in checking and restraining others from committing similar mistakes. In this way I soon arrived at the conclusion that a system of discipline that works in the dark in this way is of no practical value whatever. It is a weakness of management which positively undermines the operating department and leads the way to all sorts of disaster and loss of life. Its continued existence in practical railroad management is a standing menace to the safety of the traveling public. As a matter of fact, lives are still being frequently sacrificed and much property is almost daily being destroyed as direct tribute to this almost incomprehensible system of discipline.

The exact method by which this system is put into operation, and the regulations which govern employees in regard to it, will be understood from the following extracts from general orders on the subject, issued by what is sometimes considered one of the best-managed railroads in the country:

"The system of discipline by record having proved beneficial both to the road and to employees, it has been decided to extend the same by the addition of merit marks.
* * *

"Each employee will be promptly notified of unfavorable entries made in the record book opposite his name. He will upon request be shown his record at any time, but will not be permitted to see the record of another person.

"Bulletins, omitting name, date, train, and location, but containing facts and conclusions and such comment as is applicable, will be issued from time to time if considered necessary."

The significance of this general order to employees should be thoroughly understood. Practically interpreted it means that when an employee commits a mistake or is guilty of negligence that endangers life and property, the affair is to be looked upon as a secret. This interpretation is correct according to the actual operation of the system on the railroads. Neither in the interests of the public safety nor for any other reason can the facts in the case, as regards date, name, location, and train, be utilized or published for the prevention of future accidents of a similar nature. This is the law of the road, and while it remains in force any employee can claim the full benefit of its provisions. The practical illustration in my own experience given above is fully explained and accounted for by this general order. But the most astonishing feature in relation to it is that with the records before us it should continue to be considered and heralded as "beneficial" either to the railroads or the employees, not to mention the public. For a full explanation of this peculiar state of affairs we must turn to another quarter.

It is a well-known fact that the American railroad man, the trainman and engineer in particular, has deep-rooted objections to being "posted" in any way. We have consistently emphasized our objections from the time, years ago, when our likes and dislikes first began to cut a figure in the plans of the management. So to-day we are prepared to go to almost any extreme rather than submit to any system of discipline that will publish our mistakes and advertise us personally by name as examples, even although such action can be shown to be absolutely indispensable for the proper safeguarding of life and property. With all the facts against us we think we can be trusted to render the best service and to live up to the rules without the assistance of publicity in any form. We consider discipline to be a private matter, to be settled between ourselves and the management, and thus the workings of the system have been arranged without any reference whatever to its effect on the interests of the millions of people whose lives are placed in jeopardy by its arrangements. As a matter of fact, then, the system of discipline which I have described is the result of long-continued pressure and consequent concessions by the management to the demands of employees. These concessions have been granted for the most part in the interests of harmony. What the exact nature of this force or pressure is, which, acting on behalf of railroad employees, has been able to influence railroad legislation and management to the total exclusion of the public interests, calls for the closest investigation.

A short time ago, in a report issued by the New York, New Haven and Hartford Railroad, President Mellen stated that so far as his system of roads was concerned, increase of pay had invariably been followed by decreased efficiency. Mr. Mellen, of course, has the reports and the figures to substantiate his opinion. The statement

is plain enough, although its meaning is somewhat obscure. That decrease in efficiency has been the natural sequence and effect of higher wages, or that men lose interest in their callings or grow more careless in their habits with every addition to their material prosperity, is manifestly absurd. Mr. Mellen has not informed us that he looks upon the matter in this light, although his words may reasonably be considered to bear some such interpretation. Be this as it may, he certainly calls attention to a very uncomfortable coincidence. In effect Mr. Mellen's words may be taken as a direct challenge to railroad men to come forward and explain a state of affairs that has the appearance of being very much to their discredit. The implied challenge can be immediately and concisely replied to in this way. The efficiency of the service rendered by employees to the New Haven road has by no means been impaired or decreased by any consideration of wages whatsoever. Nevertheless, the power or pressure that induced Mr. Mellen and other railroad managers to add large sums to their pay rolls is also responsible, by the exercise of its influence in other directions, for the decreased efficiency. Increase of pay and decrease of efficiency are both indications of loss of grip by the management. Hidden away in this simple statement there is a whole world of significance. Here are fundamental facts, from a fearless consideration of which we shall be able to derive a logical and clean-cut explanation of the present situation on American railroads.

The force or influence to which I call attention is of course the railroad labor organization. But it should be clearly understood that my conclusions in regard to these unions are not to be taken as a reflection on their character and work while acting in legitimate channels. The debt we railroad men owe to our organizations admits no question. The beneficial results are before us in almost every department of the railroad business. They have established a fraternal feeling among us. On all sides they have aroused a spirit of mutual helpfulness. They have also succeeded in advancing wages and in this way contributed to the comfort and prosperity of almost every man in the service. Furthermore, they have been particularly active in inciting legislation for the protection of life and limb among workers. These facts must not be forgotten or minimized, for they are worthy of all commendation. But in this matter of the personal conduct and efficiency of railroad men in relation to these terrible railroad accidents, we have first of all to consider the paramount interests of society; and while humanity has no quarrel with the unions while they attend to their legitimate business, it certainly can be said to have a grievance against them that calls for prompt attention and remedy. This grievance consists in the fact that for a great many years the influence of the railroad labor organizations has been consistently exerted, not only to raise wages and to improve conditions, which of course is perfectly proper and justifiable, but also to nullify discipline, to destroy personal management and authority, and to obliterate from all schedules and working agreements any reference to or consideration for the paramount interests of the traveling public. It is not necessary to quote paragraphs from these agreements, which for the most part are secret documents. Given two angles of a triangle, it is an easy matter to calculate the dimensions of the third. Similarly, given the actual conduct of the men and the behavior of the management in relation to it, we can derive very accurate conclusions in regard to the work and power of the organizations.

Yet let no one imagine that this interference with the management in the matter of discipline is brought about by design or is directly intentional. On the contrary, in a very natural way, it has grown out of a system whose main object has been to secure justice and equal rights for every individual employee. But unfortunately, in pursuing these personal ends and objects, the rights of the community have been forgotten. It is easy to demonstrate that in the railroad business this fair play to the individual frequently means a sacrifice of the public interests. In the operating department of a railroad illustrations of this point meet us at every turn.

In any ordinary business establishment there is at all times a certain amount of weeding going on for the good of the business. This is done on the personal judgment and initiative of the manager. In this way a high average of efficiency is attainable in all departments. But in the railroad business no such personal action on the part of a superintendent would be tolerated for a minute. It is surely reasonable that among the thousands of men who enlist in the railroad ranks there will be many who after a while will give evidence of unfitness for the service. Regardless of the power of the superintendent in theory, these men, if they are members of an order or brotherhood, must actually hurt somebody or do considerable damage to property, before they can be removed. That is to say, there is no elimination of weak spots until something happens. But this is not all. When a vacancy occurs in the service, it is immediately advertised, and the oldest bidder in point of service takes the position. In some of the agreements with the management the seniority rule is said to be absolute, in others it is modified by the clause, "with the approval of the superintendent." But in a

business of the nature of a railroad the public interests demand that at all points the best available man should be in charge, regardless of his length of service or his rights as an individual. But the labor organizations do not permit the public interests or those of the corporation to interfere with what they consider to be the just and inalienable rights of each and every employee. Applied to the railroad business, the fixed principle that every man shall take his turn is fundamentally wrong and demoralizing. It is one of the wedges that are being used to destroy personal supervision and management and to substitute management by machine methods. In my opinion its tendency is in the interests of poor service. Healthy competition in good behavior is almost obliterated, while honest ambition and esprit de corps get very little encouragement. It has the general effect of removing the attention of employees from the management and concentrating it steadfastly upon the organization—that is to say, upon the source from which increase of pay and all other blessings are expected to flow.

Of course, I can not expect railroad managers to agree at all points with my estimate of their powers and functions, or of the helpless situation in which they now find themselves. Just at present, however, I am not interested in opinions from any quarter. The facts that interest me, and I think the public as well, relate to what these railroad managers have done in the past and are actually doing at the present day, with such powers as they possess, in the interest of safe and efficient railroad service. It may be very interesting to be informed that a superintendent has the power promptly to discharge an engineman for running a danger signal and placing the lives of 500 passengers in utmost peril, but it is much more to the point to impress upon the public mind that the action of the official will not amount to a snap of his finger if an organization puts down its foot and signifies its opinion to the contrary. Illustrations of these facts are not far to seek. Only a short time ago an engineman was promptly discharged for disregarding a signal in a most inexcusable manner. The case was passed up higher for the approval of the general manager. Meanwhile the man had discovered some kind of an excuse for his action, and a committee was appointed to look into the matter. There being a total difference of opinion between the management and the grievance committee, the heads of different organizations were summoned from some western city to help straighten out the deadlock. After a while the man was put back on his engine and the report passed round that the case had been settled in this way, in the interests of harmony. No wonder the superintendent, who was concerned in the matter, threw up his hands in disgust and exclaimed, "What's the use?"

This method of interfering with the regular course of discipline may perhaps be proper and commendable in a cigar factory or a cotton mill, but on a railroad, where the lives of countless people are dependent upon obedience to the rules, its effect upon the service is absolutely fatal. But, unhappily, this is not the whole story, for it must be confessed that the public frequently join hands with the organizations in defeating the ends and aims of discipline. After some of the worst and most inexcusable accidents that have ever occurred on New England railroads, petition has followed petition into the railroad offices with the expressed object of influencing the management to reinstate men in the service who have been convicted of inefficiency or unpardonable carelessness. Of course a superintendent should thoroughly investigate every case on its merits, but the verdict of the management should be final. The wisdom of this policy might be questioned if superintendents were political appointees or owed their positions to "graft" or "pull." As a matter of fact these men are among the hardest worked, most thoroughly capable, and conscientious men in the United States. No combination of opinion from the public, the railroad commissioners, and the labor organizations is half as likely to be just and impartial as the individual judgment of the superintendent on the spot. The following significant remark by one of those gentlemen may well be taken to heart by the public as well as by employees: "With a free hand, we could put a stop to this killing in a week."

The story of railroad management is now before us, and the record of accidents all over the United States is the price that is being paid for it. As I have described the situation, the circle of cause and effect is now complete. Beginning with the negligence of employees, which must be considered as the primary cause of these accidents, I next took up the matter of discipline, whose function it is to control and put a stop to this negligence. The system was found to be altogether inadequate and useless. Finally, I attempted to demonstrate that the labor organizations are responsible for the nature of this discipline, and thus indirectly for the accidents that have resulted from its inefficiency. Systems of discipline vary on different roads; nevertheless these contentions are sound and universally applicable, for the blight of interference with the management has in greater or less degree withered every system of railroad discipline in the United States and exposed the traveling public to the mercy of service that is inefficient and demoralized.

For the rest, it will be evident that the foregoing diagnosis of the situation bears on its face unmistakable indications of the nature of the cure. At all cost interference with discipline must cease. This conclusion admits no compromise. At the present day every decision made by a superintendent is practically subject to the approval of the grievance committee. But this is not all; the railroad manager is handicapped and held up at every turn. In his dealings with the labor problem if by any possibility he manages to escape the fire, it can only be by taking refuge in the frying pan. An illustration in point is the problem of keeping expenses within reasonable limits and at the same time administering discipline to the very men who, backed by powerful organizations, are continually insisting upon additions to the pay rolls.

But now, granting the situation and the difficulties as I have described them, in what direction are we to look for relief? As it seems to me, an unmistakable expression of public opinion would, in the first place, go far in starting us all thinking and working in the right direction. But even this will have little effect until railroad men wake up out of the self-satisfied trance in which at present they seem to be comfortably slumbering. Time was when our forgetfulness of the public interests could be accounted for by our own poverty and sufferings. But these unhappy conditions no longer exist, for to-day we are probably as well paid and otherwise as well provided for and equipped as any class of workers in the United States. Nevertheless, when we are informed that in the year 1906 10,000 people were killed and 100,000 injured on American railroads, the knowledge does not seem to "give us pause" in any way, or to ruffle our individual self-satisfaction; while our organizations look at their surroundings silently and impassively as the pyramids and obelisks look upon the Egyptian deserts.

But affairs have now come to such a pass on the roads that at last we are imperatively called upon to answer questions and explain our position. Our best friends are beginning to criticise us. They remind us that interference with discipline is in reality an attempt to take part in its administration, and that our unions were never intended or organized for that purpose. For a great many years an educational campaign has been in progress all over the country for the purpose of reminding us of our duties and obligations to our unions. This educational method has been extremely successful, and has brought into being armies of laboring men thoroughly loyal and self-centered. But the result of this system on the railroads has been so disastrous to human life that at last we are beginning to realize that there is a limit even to the pursuit of our individual well-being.

In paying attention, even at this late date, to the higher call of the social conscience we railroad men shall enter a new world with brighter prospects and a wider horizon. The nobility of labor has always been the proud watchword of American civilization. Let us be watchful lest we forfeit our claim to share in this national distinction. By recognizing our duties and responsibilities to society in our treatment of these railroad problems, we shall finally take our place in line with those who through sacrifice and high endeavor are destined, in good time, to cut out their way to industrial freedom.

Mr. COWAN. Mr. Chairman, it is quite evident that the matters before the committee will probably take all of the time to-day that you desire to devote to a hearing. If that be true, I should like to have a time set as early as possible to reply, on the Culberson-Smith bill, to what has been said in behalf of the railroads on that subject. I should also like to be heard for a few minutes in behalf of the bill that has been spoken of as Mr. Townsend's bill, to prevent advances in rates. If a time can be conveniently fixed, I should be glad, or if the committee thinks that the present proceedings will not consume the time that you will sit to-day I will then remain.

The ACTING CHAIRMAN. I do not see any reason to assume that opportunity will not be afforded you to be heard during the day.

Mr. ADAMSON. Mr. Spaulding, as I understand, wants to go to New York.

Mr. COWAN. Yes; I do not wish to interfere with him.

Mr. ADAMSON. Then you can have the balance of the time, I presume.

STATEMENT OF C. C. PAULDING, ESQ., SOLICITOR OF THE NEW YORK CENTRAL LINES.

Mr. PAULDING. I shall be very brief, Mr. Chairman, because the matters of some of these bills have been heard very fully.

Mr. ADAMSON. I understood that you wanted to be heard and go away.

Mr. PAULDING. Yes, sir; that is true, Mr. Adamson. I have already been heard, however, upon the Fulton bill, the bill routing shipments, the Smith-Culberson bill, and one or two other bills. What I said at the time, which is printed in one of the pamphlets here, represents, together with what Mr. Buckland and Senator Faulkner have said this morning, everything that I wish to say on that subject, unless some members of the committee wish to ask me questions about those bills. So that I will not at present say anything about those bills, but will rest upon what I have already said, and which is printed. I am sorry, however, that in printing my remarks they were all printed together. That is to say, in the pamphlet headed "Hearings on the bills relating to car-supply and train service," not only was what I said relating to that subject printed, but what I had to say about the routing of shipments and the Townsend-Fulton bill as well was printed there.

The first of the bills to which I wish to call attention to-day is Mr. Hackney's bill, concerning which Mr. Hackney appeared before the committee one day, being House bill No. 17971, a bill providing for a uniform classification of freight. The bill provides that there shall be a uniform classification, uniform throughout the United States, and that it shall be made and put into effect within a very short time. The time mentioned in the bill is, I think, the first of October of this year, or something like that. I am advised by the freight traffic officials of a number of roads that in their opinion a uniform classification is not only a desirable but a necessary thing; that a committee had been appointed some time ago, and is in session from time to time, endeavoring to make a uniform classification for adoption throughout the country. One of them writes me a letter saying this:

The task is an enormous one, and will certainly require more time to complete than is allotted in House bill 17971. Of this the Interstate Commerce Commission are fully aware, and I believe will join us, in spirit at all events, in undertaking to defeat the passage of the bill in so far as relates to its application October 1 of this year; it being absolutely a physical impossibility to construct a general classification in the period allotted by the bill that will protect the interests of manufacturers and shippers generally, the governing conditions in different localities being so radically different that considerable time will be necessary to enable the different classification association territories to analyze different locality conditions, as well as to negotiate and modify demands they will meet, not only as between the railroads and the different classification territories, but the shippers as well.

And the opinion of this gentleman, the general freight traffic manager of a system of lines embracing 11,000 miles, is that it will take at least two years to make a satisfactory classification—one that will be satisfactory to shippers and manufacturers as well as to the railroads. And in point upon that is what we call the uniform bill of lading committee, which was appointed by the railroads a number of years ago to meet with the manufacturers, the shippers, the bankers, and all who were interested in a uniform bill of lading and to endeavor to arrive at a satisfactory form. The committee was in session with the manufacturers and bankers and shippers for years, and when they

thought they had arrived at a solution of the difficulty and were ready to present their report to the Commission some other question would be raised by more bankers and more shippers, and the question would have to be thrashed over again. It was only last fall that the whole matter was finally submitted to the Commission for its determination. These things take a long time, because they cover so much country, Mr. Chairman. So we ask that if a bill of this sort is to be passed (and it does not seem necessary to pass such a bill, in view of the action that is now being taken), at least two years be given, with a provision for further time if necessary.

Mr. ESCH. The Commission in its last annual report of December 23 seems to indicate that that matter is in a fair way of adjustment.

Mr. PAULDING. Do you mean the bill of lading?

Mr. ESCH. No; the uniform classification.

Mr. PAULDING. Oh, the meeting is going on all the time, Mr. Esch. The committee was appointed some time ago, and meetings are going on all the time. I know that at one of the meetings of the committee here in March I endeavored to have some traffic managers present in order to tell the committee just what the status of it was; and they were all in the meeting of that committee at that time, and none of them could be here.

The ACTING CHAIRMAN. Is not one of the causes of delay not so much from the presentation of new problems, but from the thrashing over again by new persons that come in of the same questions that have been previously considered?

Mr. PAULDING. That is a very serious cause of delay; yes, sir; and it is necessary to go into those, Mr. Chairman, on account of the different parts of the country that are represented by many of these people. An endeavor is made to make it uniform to the different sections of the country, and adjust it to the different sections of the country as far as possible; and therefore it is necessary to hear these people, and to see what they have to say from the standpoint of their sections. It is a vast problem.

There are in effect, as you gentlemen undoubtedly know, three great classifications: The Official Classification, the Western, and the Southern. With those three as a basis of course the work is materially shortened, because the arguments have been made to the different classification committees in making those classifications; and that, of course, will assist the labors of the committee immensely. But there is a great amount to be done in making those classifications uniform; because, in the case of a great many articles, they are not the same, and it has led to a great deal of confusion in the railroad business.

There is a bill introduced by Mr. Esch, No. 15854. I do not know whether it is intended that a hearing should be had upon it or not. It is a bill for the construction of steel cars within a certain time.

Mr. ESCH. I do not care to press it at this time.

Mr. PAULDING. Mr. Buckland touched upon the question of transporting trains at an average rate of speed of so many miles per day, or an average rate of speed of so many miles per hour; and I want to emphasize what he said on that point from the railroad standpoint—that what would be fair for one railroad would not be fair for another. What would be fair for a trunk line having four or six tracks would not be fair for a single-track railroad passing through the mountains.

It would be impossible to make a standard for all railroads of the country—a standard of average mileage, either of freight or passenger trains. It would be impossible to make a standard of mileage applicable even to even one road, for the reasons that traffic conditions, both freight and passenger, must be met all the time; and although it is to the interest of the railroad to run its trains over its own road as fast as it can, and get them off the road and make room for others, it would be impossible under all conditions to meet a statute which says: "You must run your trains 16 or 17 miles per hour." It could not always be done; although in a great many cases, or most cases, I think, that average is exceeded, especially by stock trains.

I have a letter here which I will not read, but which, with the permission of the committee, to save time (it is rather long) I will file with the stenographer, relating to House bill 17291—the bill relating to end sills and ladders and safety appliances.

(The letter referred to is as follows:)

NEW YORK CENTRAL LINES,
MOTIVE POWER DEPARTMENT,
GRAND CENTRAL STATION,
New York, March 6, 1908.

Mr. C. C. PAULDING, *Solicitor*.

DEAR SIR: In accordance with your request of February 24, we have considered carefully the copy of the bill H. R. 17291, which was attached to your letter, and our criticisms of the bill are as follows:

That part of the bill which relates to cars being equipped with safe and serviceable ladders, sill steps, running boards, and handholds, and the part of the bill which relates to locomotives being equipped with secure handholds on both front and rear, and a secure step and a secure and suitable handhold on each side of tender at gangway, are entirely fulfilled by our present equipment, and such requirements will not produce any hardships or inconvenience or additional cost over present conditions unless the Interstate Commerce Commission, in fulfilling the conditions in section 2 to the effect that they shall fix the location and the manner of application of ladders, sill steps, running boards, and handholds, change these things from what and where they are now. If the Commission do change them we shall not have time to change the equipment. We do not anticipate, however, that the Commission would make any changes; because our equipment now corresponds with the Master Car Builders' Association standards, and these standards have been accepted heretofore by the Commission. Also, we have been working for some time in conjunction with the Commission on these things.

We do object very positively to the requirement that after July 1, 1908, all cars shall be equipped with automatic air and steam hose couplers. The bill is so loosely drawn that it might be interpreted as requiring steam coupler on freight cars; of course this is not the intention of the bill. The serious objection is that at the present time we do not know of a satisfactory automatic coupler for air and steam lines. We have tried four or five of them, and too much trouble has been experienced with each one. It will be impossible for the manufacturers to make enough couplers to equip the cars in the time given, even if there were a satisfactory one; and it would be impossible for this railroad to apply such to its equipment if the couplers could be obtained. The different makes of couplers will not couple together, and it is necessary that such couplers couple one with another on account of the general business conditions which require the general interchange of cars.

There is at present a committee of the Master Car Builders' Association working upon standard dimensions for these couplers; and the use of the couplers can not begin until such standards are adopted so that one coupler will couple with any other. All the couplers now being tried are patented; and if the Commission should urge any particular one, the railroads would be placed at the mercy of the one manufacturer, and the time when a sufficient number of couplers could be had to equip all the cars would depend upon the production capacity of one company.

If the adoption and application of an automatic coupler is rushed, we may very easily get into a condition which will be very dangerous for the public in general, and for the trainmen, and cause many delays to freight and traveling public, and seriously affect business in general.

Yours, truly,

J. F. DEEMS.

Mr. STEVENS. Did you file the decision you were showing me?

Mr. PAULDING. I will do so.

Mr. STEVENS. I wish you would. It might be of some benefit to us.

Mr. PAULDING. The decision to which Mr. Stevens has referred is a decision to which I called his attention in regard to the Townsend-Fulton bill. It is the case of *Jewett v. The Chicago, Milwaukee and St. Paul Railroad Company* (156 Fed. Rep., 160), decided last fall by, I think, Judge Lanning, in one of the western districts. I have here a short summary of the case.

(The summary above mentioned is as follows:)

In the matter of Senator Fulton's bill, which practically prohibits an advance in freight charges without a hearing before the Commission.

The Commission in their report for 1907 say, with reference to this question: "Certainly there ought to be some tribunal to which shippers can appeal, with authority, if such course seems best, to prohibit the advance or the change until the general question can be considered * * * We therefore recommend that when an advance in rates or a change in regulation or a practice is attacked by complaints to this Commission the Commission shall have the power, in its discretion, after notice to and hearing of the parties, to prohibit the taking of effect of the advance or change until the matter has been finally heard and determined."

In the case of *Jewett against C., M. & St. P. Rwy.* (156 Fed. Rep., 160) the carriers had given notice as required by the interstate-commerce act that at the expiration of thirty days from the time of giving the notice certain rates would be restored to an old level; namely, advanced. A complaint was filed before the Interstate Commerce Commission complaining of these rates, and a preliminary injunction obtained from the circuit court of South Dakota. The matter was submitted to the court upon the pleadings and stipulated facts, and the court decided that it had jurisdiction of a suit to enjoin a railroad from putting into effect a proposed rate, either as unreasonable, unjust, or discriminatory. They denied the injunction, however, upon the grounds that the matter was before the Interstate Commerce Commission, and that if the court should enjoin the putting into effect of the rates there would be no advanced rates in effect, and the Commission would be without power to determine their reasonableness or lawfulness. The relief asked for was that the court enter a final decree enjoining the defendants from putting into effect the proposed rates complained of until the Interstate Commerce Commission decided the controversy arising upon the complaint filed.

In this case it clearly appears that if a proposed advance in rates should seem to a court to be unreasonable or discriminatory, or in violation of any of the provisions of the interstate-commerce act, the court would assert its jurisdiction, and upon a proper prayer for relief and a proper showing that the complainant's business would be injuriously affected, would grant the injunction.

A shipper, therefore, has a perfect remedy provided he can show adequate reasons for invoking that remedy.

By the above bill and kindred ones it is proposed to practically confer upon the Commission the powers of a court of equity, without forcing the complainant to bring himself within the rules which he must observe if he went into one of the equity courts as now established. The Commission has no rate-making power. Its power is to fix what would be a reasonable maximum rate if, after hearing, it decides that the rate in effect is unreasonable, and there must be in existence a rate actually charged and collected before the Commission has jurisdiction. It would be better to actually give them the rate-making power in the first instance than to permit them to say that any one shipper can by a simple protest prevent a carrier or carriers from increasing its or their rates.

Mr. PAULDING. There are a number of other decisions cited in that case, supporting the proposition that a court of equity has power to enjoin an unreasonable and discriminatory advance in rates upon a proper showing being made.

Mr. STEVENS. Does that include those cases from Washington and Montana as to lumber rates?

Mr. PAULDING. I have not a reference to the case.

Mr. STEVENS. There are two or three of those.

Mr. PAULDING. There are two or three of those, and I have not a reference to them. The last time I saw Mr. Holden, who represents one of those roads, I asked him if they had yet been reported, and he said they had not. I have not seen them. He had no citation to give me. If, however, I can find one, I shall be glad to file it with the committee.

Mr. KENNEDY. You have not seen the full text of the decision, have you—or have you?

Mr. PAULDING. The decision which I had here? Yes, sir; I have the full text of that.

Mr. KENNEDY. The court does not discuss the question of the status of the man bringing that action?

Mr. PAULDING. They only discuss it in this way, as I recall—I have not read the decision for some little time, but the court decided that simply on the affidavits presented by the complainant in that case he did not really show an equity case; that is, that irreparable injury would be done to his business if the rate should go into effect.

Mr. KENNEDY. He would not have an actionable status before the rate goes into operation?

Mr. PAULDING. I think they say (I will not absolutely say, because, as I say, it is some time since I have read that, but I think they say) that if a complainant shows that irreparable injury will be done to his business by the going into effect of this rate, the court of equity has power to enjoin them for that reason, and they cite a number of decisions, which I have not here, to support their contention in that behalf.

(The committee thereupon took a recess until 2 o'clock p. m.)

AFTER RECESS.

(At the expiration of the recess the committee resumed its session, Hon. Irving P. Wanger in the chair.)

STATEMENT OF S. H. COWAN, ESQ., ON BEHALF OF THE AMERICAN LIVE STOCK ASSOCIATION AND THE TEXAS CATTLE RAISERS' ASSOCIATION.

Mr. COWAN. Mr. Chairman and gentlemen of the Committee: I do not wish to repeat in the record what I have said at the previous hearings upon the Smith-Culberson bill, No. 13841, except in so far as it may become necessary to reply to what has been said on behalf of the railroads.

Before proceeding more specifically to reply to what has been said in opposition to the bill, I wish, however, to call attention to a matter that is more nearly personal than affecting the merits of the bill.

When I was before the committee in the outset, I stated that I had agreed with the attorneys representing the railroads in Texas for the enactment of substantially the same measure by the legislature of the State of Texas. I did not at that time have a copy of it; but I have a copy now that I desire, if the committee will permit, to file as a part of my remarks.

(The copy of the bill above referred to is as follows:)

An Act to define the duties of the railroad companies with respect to the furnishing of cars for shipment of freight, the interchange of cars as between each other at junction points, and to promptly receive and transport and deliver cars loaded with freight and exchange cars with connecting lines, and otherwise to define the duties of the railroad companies with respect to the transportation of freight, and the exchange and delivery of cars at junction points, and to define abuses of railroad companies with respect to the matter of furnishing and exchanging of cars in the transportation of freight, and to empower the railroad commission of the State of Texas to correct such abuses, and to fix rules and regulations with respect thereto, and to fix penalties for the disobedience of such rules and regulations, and failure of duty on the part of the railroad companies.

SECTION 1. That it is hereby declared to be the duty of every railroad company operating a line of railroad within this State to provide sufficient tracks, switches, sidings, yards, depots, and other facilities for receiving and delivering freight, motive power, cars, and all other needful facilities and appliances to enable it with reasonable dispatch to perform all of its duties as to all traffic which with ordinary foresight and diligence could be anticipated as a common carrier, and to furnish all necessary and suitable cars and vehicles of transportation for all freight offered or tendered or to be offered or tendered to it for shipment within a reasonable time after demand therefor made by any shipper of such freight, and to supply within a reasonable time at its station or stations, spurs, sidings, switches, or other places at which it receives freight for transportation, and from which such shipper gives notice to such railway company that he desires to ship such freight, at the time designated by the shipper, where that is within reasonable time, sufficient suitable cars in which to load the same, and as to all services to be performed within the limits of this State, as to such freight and cars to transport same within a reasonable time to destination when destined to a point upon the line of such railroad receiving such freight, and if destined to a point beyond the line of such railroad, then to transport and deliver within a reasonable time such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made or to be made for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to the connecting line or lines forming any part of the route over which same is to be transported to its ultimate destination; and it shall likewise be the duty of each connecting line of railroad engaged in such transportation, as to all such service to be performed, as to all such freight and cars in which the same is carried within this State, to receive and transport within a reasonable time such loaded car or cars offered or tendered to it, if in suitable condition for movement, and deliver the same at the destination thereof, if destined to a point upon its line of railroad, and if destined to a point beyond its line of railroad, then to its connecting carrier forming any part of the route over which such car or cars are to be transported, subject to the same duties and obligations as if such freight had originated upon such line of railroad: *Provided*, That where such freight forms less than a carload, or where it may be necessary to unload the same because of any accident or injury thereto, or to the car in which the same is being transported or where such freight is unloaded at the request of the shipper en route, or where by reason of any accidental or unavoidable cause, or in order to comply with any law or regulation provided by law, such freight is unloaded, or it is reasonably necessary to do so, or where it is for any other reason necessary to unload such freight in order to forward, or before it can be forwarded, in any of such cases other suitable cars may be supplied: *Provided*, That as to freight carried wholly within this State the railroad commission of Texas shall have power, and authority is hereby vested in it, to make all needful rules and regulations for unloading cars at junction points or otherwise forwarding cars, furnishing cars for forwarding or reloading and the exchange of cars, and forwarding of such freight in the same or other cars: *Provided also*, That whenever, by reason of any accidental or unavoidable cause which can not be reasonably provided against by the use of reasonable foresight or diligence such railroad company fails to so furnish cars, and shall use reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not on account of such failure be liable to the penalties of attorney's fees or as otherwise herein prescribed. But nothing in this act shall in anywise affect the right or remedy of any shipper or other person as same may exist at common law or under any statute to recover on account of failure, delay, refusal to furnish cars for transportation of any freight, or other failure to perform any other legal duty, nor to anywise exempt any such railroad company from any of the provisions of the statutes of this State or other duties imposed by law.

SEC. 2. That for the purpose of facilitating the movement, preservation, and exchange of freight, it shall be the duty of every railroad company in this State whose line of railroad connects with the line of any other railroad company in this State

to exchange at such connecting or junction points the loaded and empty cars used in or for the transportation of freight carried upon such lines of railroad forming any part of the route over which such freight is carried or to be carried; and it shall be the duty of any such railroad companies forming any part of the through or joint route over which any freight is carried or to be carried, or having or participating in the joint rates on which such freight is carried or to be carried, on demand of any such connecting line delivering to it any such loaded car or cars of freight at junction points within this State, to furnish to such delivering line within a reasonable time after such loaded cars are so received at such junction point in this State, as many cars suitable for the carriage or transportation of similar freight as may be so delivered to it loaded by such connecting line; and upon the demand of the owner thereof, or the railroad company entitled thereto, or to the use thereof, it shall be the duty of every such railroad company so receiving the cars of another to return the same at the place where they are received, or at such place as may be by said railroad agreed upon, within a reasonable time after demand therefor; and, as to cars exchanged in transporting freight wholly in this State, within the time and according to the rules and regulations prescribed by the railroad commission of Texas.

SEC. 3. The railroad commission of Texas is hereby authorized and empowered, as to all freight carried wholly within this State, and the cars used therefor, to make and establish all needful rules and regulations, general or special, which may be different according to the circumstances and conditions to different railroads and localities and for different kinds and classes of freight and cars, providing for the time, place, and manner of demanding cars for or giving notice of shipment of such freight, and the time, place, manner, and order in which the same shall be furnished to shippers for the purpose of shipping freight between points in this State; and to prescribe rules and regulations for the furnishing, exchanging, and interchanging of cars loaded and empty by railroad companies as between each other; the time, place, terms, and conditions upon which such cars shall be furnished, and such interchange shall be made; and in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by such railroad company for the use, loss, injury, or destruction of the cars of another railroad company in the transportation of such freight; the time within which, and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars or to have its cars returned, the reasonable free time to be allowed the shipper for the loading of such car or cars without incurring liability for demurrage, the free time which shall be allowed to the shipper or consignee in which to unload such freight without incurring any liability for demurrage; a schedule of reasonable demurrage charges, reciprocal or otherwise, for the use of cars, irrespective of damages or penalties herein provided, which may be different for different railroads and different traffic and localities, to be paid by shippers for the detention or use of cars, either in loading or unloading, or by the railroads for failing in a reasonable time to furnish cars or to make delivery of loaded cars, subject to the penalties and damages herein provided, and the rules and regulations with respect thereto. Said commission, whenever it may deem same necessary in order to secure the prompt transportation of freight and preservation of the property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this State, including the time for transfer and delivery as between connecting railroads.

It shall be the duty of every such railway company to conform to all of the rules and regulations of the commission, made in accordance with this act, and the failure of any such railroad company to observe the rules and regulations of the commission or to comply with the provisions hereof as to freight carried wholly within this State, shall be deemed an abuse subject to correction by the railroad commission of Texas, and shall subject such railroad company to the penalties hereinafter provided.

SEC. 4. That every railroad company which, in violation of any of the provisions of this act, shall fail to furnish any car or cars for the shipment of any freight within a reasonable time, or in case of the shipment of freight between points when within this State then within the time prescribed by the railroad commission of Texas, in the event it shall prescribe the time by rules or regulations as provided for herein, and if it shall fail to do so then within a reasonable time, or shall fail to receive and forward any loaded car or cars or to exchange cars as provided for herein, shall be liable to the shipper or other person injured or damaged thereby for all such injury and damage as may result to such shipper and all special damages of which such railroad company had notice at the time of the shipment, or which shall occur after written notice thereof, and shall be liable in addition thereto for an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of such damages; and in case of the failure or refusal to so furnish within a reasonable time any car or cars for the shipment of live

stock, green fruit, vegetables, or other perishable freight, such railroad company, for such failure to furnish such car or cars within a reasonable time, shall be liable to the shipper for the damage caused thereby and a reasonable attorney's fee in case suit is brought to recover the same. That every railroad company which shall fail to furnish cars or to exchange as required by the provisions of this act, or by the rules and regulations of the railroad commission as provided for therein, shall be liable to the railroad company injured thereby for all such damage as may result to it, and in addition thereto to an amount equal to a reasonable attorney's fee in case of suit brought for the recovery of such damages.

Every railroad company using cars of another railroad company, or which have been delivered to it by such railroad company, shall be liable to the party entitled thereto to pay for the reasonable use and hire thereof and for injury or damage thereto or destruction thereof while in its possession or under its control for the amount of such injury; and in case of cars in the shipment of freight between points wholly within this State the amount for the use or hire thereof may be prescribed by the railroad commission of Texas, except where the owners of such cars and such railway companies agree upon such compensation, in which case the amount so fixed shall govern. And where any such railroad company or owner of any such car or cars shall be dissatisfied with the amount fixed by the commission for such use, hire, loss or destruction or damage to such car, or where the railroad company liable therefor shall fail to pay for the same, the railroad company or person entitled thereto, or which is liable for the use, hire, loss, injury, or destruction of such cars, shall be entitled to establish the reasonable value thereof in a suit brought in any court of this State having jurisdiction of the parties, and of the amount in controversy, and such court shall render such judgment as to it shall seem just and reasonable: *Provided*, That no railroad company shall be compelled to furnish its own cars to any other railroad company which is insolvent, except upon reasonable security furnished to it to protect it from loss or damage to or destruction of such cars and compensation for the use thereof, and in no event shall any railroad company be required to furnish any cars to any connecting line except to exchange for other cars reasonably suited for the transportation of freight.

SEC. 5. That every railroad company which shall willfully or by its own gross negligence, or by the gross negligence of its agents having charge and management of the manner for furnishing cars, fail or refuse to furnish or exchange cars as herein provided for, or to transport or deliver the same within the time prescribed by the Commission as to freight carried between points wholly within the State, or if not so prescribed, then within a reasonable time, shall, in addition to the other liabilities herein provided for, forfeit to the State of Texas for each of such violations not less than one dollar nor more than one hundred dollars for each offense; and each day of such failure or neglect as to each car which it by such willful or gross negligence shall fail or refuse to furnish or exchange shall be treated as a separate offense; such penalties to be recovered at the suit of the attorney-general of the State of Texas in the court having jurisdiction of the amount at Austin, in Travis County.

By the term "shipper" as herein used is meant any person, firm or corporation tendering freight for shipment, and any consignor or consignee, or the assignee of any bill of lading or other person, firm, or corporation having the right of a consignor or consignee.

SEC. 6. It shall be deemed prima facie a reasonable time within which to order cars that any shipper shall give written notice thereof to the station agent at the place of shipment, or in his absence to the nearest station agent of the railroad company to which such application is made, three days before such shipment of five cars or less, and five days for less than ten or more than five cars, and eight days for ten cars or more; and it shall be the duty of the railroad companies to furnish their station agent with printed blanks upon which shippers may make application for their cars.

Provided, that nothing in this act shall be construed to exempt any railroad company from its obligation to furnish cars for shipment without such written notice, but it shall only be subject to the penalties of this act for failure to furnish cars to shippers where notice thereof shall be given in writing, or in case of shipment of freight wholly between points in this State, then in accordance with the rules and regulations of the railroad commission of Texas.

Mr. COWAN. To my astonishment, after the hearing in the Senate committee in the first instance, and, at a subsequent meeting of the subcommittee, Mr. Gardner Lathrop, the general solicitor of the Santa Fe Railway Company (or rather the Santa Fe System) filed a telegram from Mr. J. W. Terry, of Galveston, denying that any such agreement had been made on the part of himself and Judge Stedman.

who were the attorneys representing the railroads, as I had stated, before the conference committee of the house and senate of the Texas legislature, when the bill was, as I stated, agreed to and reported out and passed (I suppose I stated) without objection. It was without objection so far as I knew. I did not like to have my standing before this committee or the Senate committee challenged by that sort of a statement; and it was owing practically to that, and not to the merits, that I state the circumstances that attended the adoption of the Texas law known as senate bill No. 52, a copy of which I have just handed to the stenographer.

Just toward the close of the session of the legislature at Austin last spring, two or more bills were under consideration, and had been for some considerable time. Those facts I simply knew by newspaper reports. Not long before that the Supreme Court of the United States had held that the Texas statute which provided for a penalty of \$25 per day for the failure of a railroad to furnish cars where the shipper gave written notice six days before he desired to ship them, and where he deposited one-fourth of the freight, or \$25 per car, perhaps, was unconstitutional as a regulation of interstate commerce. That was held by a divided court, and the ground upon which that decision was rendered was that the legislature, in the exercise of the police power of the State with respect to the matter of supplying cars for the shipment of freight loaded in the State, could not enact a statute which would regulate the loading of freight for interstate commerce, unless that statute were reasonable. They held that because the statute did not except accidental and unavoidable causes, and did not give any latitude whatever in cases of such enormous demands for cars that the railroads could not, in the exercise of reasonable diligence, be expected to provide for them, on that account alone the statute was in unreasonable restraint or regulation of interstate commerce; and anyone who will read the decision will see it.

Mr. TOWNSEND. Of interstate commerce?

Mr. COWAN. Yes, sir; by a State legislature.

Mr. TOWNSEND. Oh, yes.

Mr. COWAN. And anyone who will read the decision will see that the Supreme Court in effect held that the State legislature may enact a reasonable law to provide for the furnishing of cars, but the courts will determine whether it is within the police power of the State by the fact, to be found by the court, as to whether the law, on its face, is a reasonable enactment.

The court of appeals of Texas had held the act applicable as well to interstate shipments as to State shipments; and during that time we were having comparatively little difficulty in all those cases where the deposit was made and the demand made in writing. In a few instances, comparatively few, the penalty had been sued for and collected, and almost uniformly when the deposit was made the cars were furnished. After the Supreme Court held that the law itself was unconstitutional so far as it regulated interstate commerce, saying nothing with respect to the validity of the statute respecting intrastate shipments, the court of appeals held that if the statute was unconstitutional as to interstate shipments, being so interwoven and applicable alike in its terms to both State and interstate shipments, it would be invalid as to the State shipments,

wholly on account of the fact that the Supreme Court of the United States had held it unconstitutional respecting interstate shipments.

A writ of error was granted by the supreme court of Texas from that decision, and it held that no such results followed from the decision of the Supreme Court of the United States. But it did not hold that until after the action of the legislature in passing the bill I am about to speak about. So the case was pending in the supreme court of Texas at the time this bill which I have just handed to the stenographer was pending before the legislature. These bills which had been introduced in the legislature were introduced because of the fact that the court of appeals had held that statute void as to intrastate commerce, based upon the theory that being void as to interstate commerce it must also be void as to intrastate commerce, because, as I say, they could not separate the provisions of the statute. But that was subsequently held to be erroneous.

The bills which had been offered in the legislature were, first, a bill offered by Mr. Bryan, if I remember correctly, which might be called drastic in its nature; and a substitute offered by a man by the name of Nevin. The two in common parlance were supposed, the one to represent the public, and the other to be very friendly to the railroad interests. There was, as I heard, a considerable lobby maintained at Austin. At all events, I saw a large number of railroad attorneys there, and there was no question that they were there looking after the interests of the railroads, as they had a right to do, and as to which there was no controversy.

Seeing that some law was going to be passed upon the subject, and desiring one which would regulate interstate carriage so far as furnishing cars was concerned for the shipment of live stock, I drew the bill to which I have just referred, and took it down to Austin just at the close of the session. I met Judge Stedman, who has always been a friend of mine, and Judge Terry, who has likewise always been a friend of mine—at least, I have been a friend of theirs, and I think they are friends of mine—and told them frankly what I was endeavoring to do. I said that I did not believe in the principles of the bill proposed by Mr. Bryan, and that the substitute proposed by Mr. Nevin would furnish us no relief, and therefore I wanted to get up a reasonable bill and see if we could not agree on it. I had prepared the bill in advance; but there had been some corrections made, because it was very difficult to draw it so that it would apply to interstate commerce and not be subject to the objections which the Supreme Court of the United States had pointed out in the case I have mentioned. I had the stenographer of the Texas commission copy the bill, furnish a copy to some of the commissioners, and furnish a copy each to Judge Stedman and Mr. Terry, by their request, about noon.

We met again at Commissioner Colquitt's office about 4 o'clock in the afternoon. There were present the representatives of the Grain Dealers' Association of Texas, Mr. Dorsey, and the representative of the Fort Worth Traffic Bureau, Mr. Pawkett, and together the five of us had a conference over the bill. There were several points in the bill where Mr. Terry and Mr. Stedman had made objections. In so far as I reasonably could do so, I admitted those objections, and the corrections were made accordingly. Then we announced—I do not know that it was before that committee, but late in the evening, just

as the House and Senate were adjourning—we announced to the chairman of the conference committee of the House and Senate that we would have the bill ready to present to the committee that night. We went down town and had our dinner, and came back and sat around a long table in the committee room until about 11 o'clock. I was returning home on the 11.30 train. The bill was gone over section by section. Possibly some little changes were made in it before the committee, and it was handed to Judge Stedman to write the repealing clause; because they wished to have an express repeal of the act that I have mentioned, the validity of which was pending before the Supreme Court. I was told by Mr. Carswell, who was on the conference committee and a lawyer in my town, that when they came in with the repealing clause it repealed other statutes than the one in question, on account of which he requested that the repealing clause be stricken out; and the bill passed without the repealing clause, relying upon the fact, as I had contended, that by implication it necessarily repealed all acts in contravention of it. And the bill was passed, so far as I know, without any objection whatever.

I thought that constituted an agreement upon the bill. I make that statement in defense of what I said here, and in view of the fact that it has been charged that I was entirely unwarranted in stating that they agreed to the bill. The expression in the letter filed by Judge Terry is that he did not agree to the enactment of the legislation. I was only speaking of the fact that we agreed on the bill before the conference committee.

Here is what Mr. Carswell, a member of that committee, said in answer to a letter I wrote him, just to know what he recollected about it. His reply is dated on the 6th of April, directed to me, and received here. It is in such bad handwriting that it is hard to read, and I guess I had better read it. (Reading:)

DECATUR, TEX., April 6, 1908.

HON. SAM. H. COWAN.

DEAR SIR: Your letter recent date to hand, referring to the bill of which you speak. I was a member of the conference committee on the part of the House, and took an active part in the preparation of the report that was adopted. My distinct recollection is that a number of the railway attorneys, including Judge Terry and Judge Stedman, were present and participated in the discussions of the committee; and the result was an agreement, all round. You prepared the report and it was gone over carefully by the committee and these attorneys, and certain changes made and fully agreed upon; and Judge Stedman was selected by the representatives of the railways to prepare the repealing clause. It was my understanding at the time that the report was entirely satisfactory to the railways.

Respectfully, etc.,

R. E. CARSWELL.

Mr. Dorsey, of the Texas Grain Dealers' Association, writes the following, directed to me. (Reading:)

FORT WORTH, TEX., April 6, 1908

HON. S. H. COWAN, Washington, D. C.

DEAR SIR: On returning to the office I find your letter asking me to write you my understanding of the attitude of Messrs. J. W. Terry, general attorney for Santa Fe, and N. A. Stedman, general attorney for I. and G. N. Rwy. Co., on what is known as senate bill No. 52, which refers to demurrage and movement of cars in Texas, as per the inclosed copy, and I desire to advise that, working in the interest of the association I have the honor to represent, in connection with Mr. U. S. Pawkett, of the Fort Worth Freight Bureau, and with yourself, representing the Cattle Raisers' Association, we held a conference with these gentlemen, and with some suggested changes of the bill you had prepared these gentlemen agreed to accept the same.

On that night the free conference committee of the senate and house met. Messrs. Terry, Stedman, Pawkett, you, and myself met with the committee and discussed

this draft made by you, and agreed to by these gentlemen, and with a few suggested changes in the wording by the committee the bill was agreed to and passed in the form as per the inclosed copy.

Trusting this is in accordance with your understanding and is in accordance with the facts as I understand them, I remain,

Yours, very truly,

H. B. DORSEY, *Secretary*.

Mr. Pawkett writes me:

FORT WORTH, TEX., *April 3, 1908.*

Hon. S. H. COWAN, *City*.

DEAR JUDGE COWAN: Replying to your letter 2d instant in re Culberson-Smith bill, I am somewhat surprised at the statement telegraphed by Judge Terry to Britton & Gray, attorneys at Washington, regarding the bill passed by the thirtieth Texas legislature defining the duties of railroads with respect to furnishing and exchanging cars, etc.

Mr. H. B. Dorsey, secretary of the Texas Grain Dealers' Association, and myself had been in Austin several days endeavoring to defeat the passage of two very objectionable bills, one in the house and one in the senate, for which the bill which is now a law was substituted, and neither of which bills had passed either house.

On your arrival in Austin you drafted the bill which, as amended, is now the law, and after you had completed the draft of the bill a conference at which were present, besides you and myself, Mr. Dorsey, Hon. J. W. Terry, of the G. C. and S. F. Rwy., and Hon. N. A. Stedman, of the I. and G. N., lasting almost an entire afternoon, was held in the office of Commissioner Colquitt, and the bill, as drafted by you, gone over section by section, and, after incorporating various changes suggested by different parties to the conference, was agreed upon and presented to the free conference committee the same evening.

During the progress of the free conference, at which both Judge Terry and Judge Stedman, representing the railroads, were present, the bill as drafted was gone over again section by section, various changes being made.

I am sure it was the understanding of everyone present that the bill, as agreed upon in this free conference, was satisfactory to all interests, it certainly being agreed to by myself, representing the commercial interests; by Mr. Dorsey, representing the Texas Grain Dealers' Association, and yourself, representing the live-stock interests; and I distinctly understood both Judge Terry and Judge Stedman to agree thereto as representing the railroads.

You will recall that both the senate and house members of the free conference committee so understood it, and took separate votes on the bill as agreed upon, and which resulted in agreement to report same to both houses of the legislature, which was done, the bill being passed without any change whatever, as reported by the free conference committee.

Yours, very truly,

U. S. PAWKETT,

Secretary and T. M. Ft. Worth Freight Bureau.

I will have to beg the committee's pardon for taking up time in that matter; but I do not propose to be placed in the attitude of having made a statement before an important committee of Congress that is not true. These gentlemen have simply forgotten what took place. Those are the things that happened. Whether or not they mentally agreed to the passage of the bill is unimportant in this case; but it is important to me, as I have been before this committee, to show by gentlemen present what they understood the facts to be.

There have been a great many errors committed by gentlemen addressing themselves to this bill who do not understand its provisions. They have spoken to subjects which the bill distinctly provides for, where they have assumed that the bill did not do so. There are many objections made which on a proper understanding of the bill are met by that fact, and it will not serve any useful purpose for me to take up the time of this committee in attempting to point out in detail the various statements of each of the witnesses or those who have appeared for the railroads, and to answer them separately. It would take too much time, and I shall content myself more par-

ticularly with referring in a general way to the sort of errors which have been committed.

It has been stated by some of the gentlemen representing the railroads, some before the Senate committee and some before this committee, that no relief of the sort demanded in this bill is needed. I wish to call the committee's attention to some statements made by Mr. Peabody, the statistician of the Santa Fe Railway. Mr. Peabody says, at page 138 of the report, in answer to a question by Mr. Esch:

As I say, we favor the live-stock interests much more than they deserve.

That is the reason we need most seriously a law which shall define what the duty of the railroad is to the shipper. If the railroad believes that it is giving more service, better service, to the live-stock shippers than the live-stock shippers deserve, we need not expect an improvement in the service. Now, Mr. Peabody did not know what he was talking about. He has nothing to do with the operation of the railroad, absolutely nothing; and Mr. Gorman, who represents the traffic department, and Mr. Kendrick, the vice-president in charge of operations, would spurn any such language. They would not be actuated by any such feeling or motive, and I do not charge the Santa Fe Company with being responsible for any such statement as Mr. Peabody there made; but the fact that some of the representatives of the railroad feel that way about it ought to lead any of us to know that the shipper needs somebody to define what it is that he has a right to expect for what he pays. It was stated by Mr. Turner before the Senate committee, I do not know whether he appeared before the House or not, that the statements that had been made before the Senate committee respecting the character of service furnished by the Santa Fe Railroad Company over that part of the line he is in charge of operation, 500 miles from Higgins to Pecos, Tex., and down through New Mexico, were exceptional cases, and that as a rule they furnished cars and furnished transportation. He also stated, and Mr. Peabody also referred to that, that there was an association of live-stock owners in the Pan Handle of Texas who had made no complaint with respect to the rates or the service.

I am perfectly familiar personally with the whole situation respecting the matter mentioned by each of them, and will say that the Pan Handle Association has never taken any part in any matters of public affairs. No member of this committee or of the Senate committee ever heard of any of them, or anybody representing them, appearing before the House or Senate committee in favor of the rate bill; yet they were all in favor of it. The gentlemen who meet in that association and who are members of it or, to a considerable extent, members of the cattle raisers' association of Texas—some of them are members of the executive committee of the cattle raisers' association of Texas, notably, the president of that association, the Pan Handle; and for Mr. Turner and Mr. Peabody to assume that the statements we have made are untrue with respect to the character of the service is entirely unfounded.

I wish now to refer the committee to a statement, which I referred to when I was before this committee heretofore, made by Mr. Low, the general attorney of the Chicago, Rock Island and Pacific Railway, who attended the hearings of the Interstate Commerce Commis-

sion held by Commissioner Prouty at Amorilla, Tex., in the center of the Pan Handle, where the home of this association is, that these gentlemen speak of as not being in favor of providing for furnishing cars. Mr. Low heard the testimony of the witnesses, and came down to Fort Worth in a special car in the same train with Judge Prouty and myself, and attended the hearing at Fort Worth on the same subject. Here is what Mr. Low said—by way of parenthesis, I may say that Mr. Peabody was not there and did not know anything about it, and never knew anything about it, because he was never there. Mr. Turner, the division superintendent of the Santa Fe, in charge of that road, lived there, his office force is there, and his chief clerk testified, and they did not pretend to deny a single thing testified to by the witnesses there and reported and filed here by me at a previous meeting of this committee. During the course of the examination of Mr. Parramore, Mr. Low said

May it please the Commission, it seems to me that we might as well make the issue that naturally arises, that the Commissioners can not fix rates on poor service. In a case like this, where they agreed to furnish cars and did not do it, the law imposes the liability. The Commission can not make it any less or any greater. It seems to me that this testimony is immaterial.

Commissioner PROUTY. I do not think that we ought to hear much testimony as to specific instances, but the defendants claim that one reason why these rates ought not to be reduced is because the railroads are required to give expeditious service. They say that they do, in point of fact, expedite this service. The testimony has tended to show that, in point of fact, the service was not so expeditious as the carriers state. To that extent it seems to me that it would be material.

Mr. Low. It seems to me that the law fixes the liability. The carrier must furnish reasonable service or is liable.

Commissioner PROUTY. You insist that you are furnishing reasonable service, do you not?

Mr. Low. I do not. I do not think we are.

Commissioner PROUTY. What do you say a reasonable service would be?

Mr. Low. That would depend on many conditions that would apply at different places. I do not think any man can contend that the railway lines on particular lines are furnishing expeditious service. On some lines we are furnishing excellent service, but on these lines I do not think we are. To-morrow we may get our lines in shape and furnish good service. Rates are fixed on the basis of reasonable service. If we depart from reasonable service the law gives a remedy.

Now, there is Mr. Low's admission. We have filed heretofore evidence of a number of shippers with respect to conditions on the Pan Handle lines of the Santa Fe Railway, and the assertion made by Mr. Peabody and by Mr. Turner that the cases which we have furnished are simply isolated cases is absolutely a mistake. I would not say worse than that. I assume it is not more than a mistake, to show which I desire to file with the committee about eight or ten letters from prominent shippers on the Pan Handle line, which is the very line that Mr. Turner speaks of and the very line that Mr. Peabody is speaking of, to show what the conditions are; and I will say to this committee, without taking up your time or burdening you, I myself will undertake to say that those conditions are just as bad as can be. They will be so just so long as the gentlemen who say they are giving us better treatment than we are entitled to have a right to say what sort of treatment they will give us.

The day before I left Fort Worth, Mr. R. W. Johnson, of Kansas City, came into my office to inquire what his remedy would be with respect to a shipment he had made from Plain View, Tex., the terminus of a branch line of this same railroad that I speak of, belonging to the Santa Fe, and here is what happened to him. He bought

700 or 800 head of cattle belonging to a range called the "Currycomb," which goes by the name of Brandts down there, the range which Mr. Post has bought, the gentlemen who owns so much of the property in Mr. Townsend's State, and who has taught us how to drink postum, and so on.

When he bought these cattle from Mr. Loftan, the manager of the ranch, they went to Mr. Turner, this same gentleman, and Mr. Loftan had ordered the cars to ship these cattle to market, and they asked Mr. Turner if the order which Mr. Loftan had put in for the cars could be turned over to Mr. Johnson, who had bought the cattle, and Mr. Turner said that it could be, and he would so consider it, if it was the identical cattle that the cars were ordered for. Those cars were ordered, to the best of my recollection, the 17th of July, or possibly it was the 3d of July—I have two shipments in mind, and I may have the dates a little mixed, but it was one of the other—for shipment in October. So difficult is it to get cars to ship that, as Mr. Coburn testified at Kansas City, a very reliable gentleman who lives there and runs a cattle company in New Mexico, who said in December of 1906, "I have already put in my orders for shipment of my cattle next year." They make shipments in the spring to the northern ranges and to Kansas and then shipments in the fall to market, and I do not recollect which shipment it was. Mr. Johnson bought these cattle, paid for them, drove them to the railroad at Plain View to be shipped on the 15th of October, and he got there the 14th and notified them that he was ready to load. They could not give him any information about the cars. He was compelled to hold the cattle there, which was some 60 or 80 miles from where he had bought them, in insufficient pasturage, as pasturage is always insufficient around a loading point, and finally he got cars to ship, according to my recollection, the 27th of October for part of his cattle, and he got cars on which to ship the balance on the 11th of November.

In the meantime a snowstorm came on and, the weather being very bad and the pasturage insufficient, the cattle were in very bad condition, and he landed in the market long after the panic had come on, and from all the causes together he lost twenty-nine hundred and some odd dollars out of his own pocket of his hard-earned money. He was offered \$1,000 profit for the cattle at Plain View when he got them there, and would not take it. Now, I know that man to be a poor man. I know he worked for two years for a commission company at Kansas City at \$150 a month. I know he borrowed the money to buy these cattle.

Now, gentlemen of the committee, the lines of the Santa Fe Railway in the Pan Handle of Texas do not own a car. They do not own a locomotive. Here is a report published before the Senate committee and taken from their annual report to the Interstate Commerce Commission. But the Atchison, Topeka and Santa Fe owns all of the equipment and furnishes it to them just as it pleases. There are concerns at Chicago which own private car line cars to the number of about 20,000. The Stable Car Company own about 17,000 cars, according to the report which I read recently in the register of equipment, commonly called the equipment guide; and those cars are leased to the railroads, and have been for years, on a basis of 6 mills per mile, unless they have recently changed that rate. The

Santa Fe Railway system itself has something over 4,000 stock cars. Now, here is an order put in in July for this shipment. The railroad company got no more money by moving these cars on the day it did move them than they would have gotten had they furnished the cars and moved them promptly.

Now, I can not say whose fault this was, because I do not know; but I do say that the man who does business with a railroad company which treats him that way ought to have a right to expect of Congress to define, at least, what the duties of a railroad company are with respect to furnishing the cars. What sense is there in providing that a commission shall fix the rates, if the railroad company may give a service, or reduce it, if you please, just as it pleases? I undertake to say, gentlemen of the committee, that the instance I have given you is an instance of hundreds that are happening all the time. This is right up to a recent time, when they said they had cars.

In the fall of 1906 I went out on the Pecos Valley line of railway going to Roswell, N. Mex., and I went with an inspector of shipments of cattle, who was working for this Pan Handle Association, whom these gentlemen referred to as not having made complaints, and ate breakfast with him at the Amorilla Hotel, and he said he wanted to see me in regard to the car situation. We went to Hereford, about 50 miles away, and he stated to me that the conditions were simply horrible; that men had been holding cattle there for six weeks and two months, and could not get cars and could not find out when they could get them. Now, that is the line of railroad that has not got a car to its name, but the stock of it is every bit owned by the Atchison, Topeka and Santa Fe, and its officers are all appointed by that company, although it maintains a separate corporate existence in Texas.

I got off the train at Hereford, and I saw a number of these cattlemen. The train stayed there five or ten minutes, and a number of them came along and asked me what they were going to do about it. I told them, "I can't tell you. All you can do is to put in your requisition for cars, and then try to hold them responsible for damages." They said, "That is not doing us any good now." One man told me that he had driven his cattle for 100 miles six weeks before that, and that he owed the bank at Colorado City a note and had a mortgage on the cattle and that they had then gone down to such an extent in point of flesh that they were not fit to ship to market, and he could not renew his note and did not know what he was going to do. The result was that he sold his cattle at that station, and they were in such condition that they had to be held over until the next year.

Now, those are things that I know are happening on this line of railroad that Mr. Peabody talked so fluently about, and which Mr. Turner says are isolated cases.

Two or three months ago a man came into my office—and I hoped to have had an affidavit from him here on the subject—by the name of McMillan, who lives at Hereford, and who is a man that buys and ships cattle to the market and makes a living that way, but who possibly has a little ranch with some pasturage, although I am not well acquainted with that. It was on a Tuesday. He said, "I have been here two days in the yard at Fort Worth with 24 cars of cattle, myself and two neighbors. We shipped down here on the promise

that we would get cars to Kansas City, but we can not get any cars, and this market won't do to sell these cattle on, and I do not know what we are going to do."

I went down with him to the office of Mr. Galbreith, the live-stock agent of the Missouri, Kansas and Texas Railway, and by agreeing to waive any claim for damage because of the contention that the Missouri, Kansas and Texas had agreed to supply cars on the cattle arriving at Fort Worth, he agreed, as he told these gentlemen, on account of personal relations with me, to furnish them the cars to ship on to Kansas City, and they did ship the 24 cars. It had been nine days from the time those cattle were first loaded at Amarillo until they reached the Kansas City market and were sold. Mr. McMillan told me that he lost \$3,000 on the transaction and that the other men lost more. I have forgotten the amount. Now, here is what had happened to those cattle before that: Those cattle had been ready for shipment in the fall of 1906 at Hereford, the very time I have told you about passing through there and seeing these men, along with a great many others, and they had been unable to get cars, and had to hold them over until the next year, and then when they got back they went in July and ordered cars from Mr. Turner, in charge of that railroad up there, or who purports to be, and they only got, according to my recollection, 5 cars out of the total that they ordered. The season got late, and it got up to November, with the prospect that they would have to hold their cattle over another year, with a chance of their dying during the winter. They drove those cattle 50 miles, through lanes mostly, to Amarillo to get cars on the Fort Worth and Denver City Railway, and ship them by Fort Worth to Kansas, over 300 miles out of the way, at an expense of several dollars more per car freight.

Gentlemen, I could detain you, if you would permit, which you ought not to do, all this evening, relating the most outrageous experiences that have occurred from the Rio Grande to the Canada line. You have heard no stockman who ever appeared before you who has not told you of these things. There are pages after pages of evidence taken before the Interstate Commerce Commission.

Mr. TOWNSEND. What do the railroads say to that, when you make complaints?

Mr. COWAN. The Fort Worth and Denver, for example, says, "We can not furnish you cars, because if we let our cars go off our line, we can not get them back. We will furnish you cars to ship to the junction point with the Santa Fe, at Amorilla, or at Delhart with the Rock Island, if you can get the cars there to load out and ship on." If you order the cars from the Santa Fe or the Rock Island to be delivered at Delhart at the day you expect your cattle to land there, so you can take them off the cars and then load them into their cars, you do not know whether you are going to get your cars there or not. There is no law that we can apply that fixes the time you are going to get them. There is no certainty about it. They won't promise you the cars at any particular day; and if they do, the chances are ten to one they won't be there on that particular day. Now, imagine yourselves in the cattle business, and shipping, as Mr. McKenzie was, as he testified here, from Esterline, Tex.—

Mr. TOWNSEND. To get back to that other question, and answering that question, as I intended to put it, the cases you have men-

tioned, the specific instances where a man drove his cattle 150 miles and could not get the cars, it was not the question there of getting a car there to connect with some other road, but it was a question of getting cars from the initial carrier.

Mr. COWAN. From what ought to be the originating line.

Mr. TOWNSEND. What reason did they give you for that?

Mr. COWAN. I did not ask Mr. Turner what the reason was, but I can say that I asked Mr. Johnson what excuse they gave for not furnishing the cars, and Mr. Johnson said that they were furnishing cars in the order in which the orders were put in, and that is the only reply that they made to him. He so stated to me.

Mr. TOWNSEND. Do you know whether the company did have cars that it could furnish?

Mr. COWAN. No; it would be impossible for me to know that, Mr. Townsend; but I know this, that when we had the law in effect in Texas, where you could deposit \$25 per car, that it was the rarest sort of thing cars were not furnished, and I do not believe there have been twenty cases during the several years that that law was in force where the penalty was collected. Mr. Pryor stated an instance before this committee that he knew of where he had ordered cars for an interstate shipment and could not get the cars, and he changed his order for cars to ship only to Fort Worth, is my recollection, and deposited the money, and the cars were forthcoming.

The amount of live stock shipped to-day is nothing like as great in proportion to the number of stock cars on the Santa Fe system as it was seven or eight years ago. They then furnished the cars. They now do not furnish the cars, except as they please, on that Pan Handle line.

Mr. ESCH. The business has greatly increased since that time, has it not?

Mr. COWAN. Not in live stock.

Mr. ESCH. It has not.

Mr. COWAN. No, sir; not in cattle shipments.

Mr. ESCH. Then they have not kept up their cars, according to that argument.

Mr. COWAN. Yes; they have. They have increased their cars very largely.

Mr. ESCH. What service do they put them to?

Mr. COWAN. To the service of handling railroad material, ties, cord wood, posts, lumber, brick, and so forth.

Mr. ESCH. And does that sort of dead freight pay better than live stock?

Mr. COWAN. No, sir; I don't think it does.

Mr. ESCH. What reasons do they allege, if any, for putting the cars to that use, when they are demanded in a better business?

Mr. COWAN. Some of them claim they do not do it at all. For example, Mr. Turner claims they did not load any cars with dead freight and had not done so while they were constructing the Pecos line cut-off. Yet the stockmen testified that they saw a whole train of stock cars stand as long as a week with railroad material in it.

The CHAIRMAN. Mr. Buckland would like to ask you a question.

Mr. BUCKLAND. In view of the memorandum which you filed at one of the hearings before this committee of a sort of a brief by Mr. John B. Daish—

Mr. COWAN. I do not know anything about that.

Mr. BUCKLAND. There is a question of law I would like to ask you about. In No. 7 of his brief Mr. Daish said:

It needs, however, to be recalled that the Congress has already provided, to a certain extent, for quasi-reciprocal demurrage rules by providing in the late law (act June 29, 1906) "that the term transportation shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, expressed or implied, for the use thereof * * * and it shall be the duty of every carrier, subject to the provisions of this act, to provide and furnish such transportation upon reasonable request therefor." The shipper is thus left to pursue his remedy. It is necessary to show that the time during which facilities were withheld from him is unreasonable, and his damage, for the law also provides: "Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statutes, but the provisions of this act are in addition to such remedies" (as amended March 2, 1889, and February 8, 1895). Further, a carrier which shall fail to furnish transportation as thus defined is subject to a penalty provided in section 10 of the act (as amended March 2, 1889), reading: "That any common carrier subject to the provisions of this act, * * * who * * * shall willfully omit or fail to do any act, matter, or thing in this act required to be done, * * * shall be guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine not to exceed \$5,000 for each offense."

I would like to know whether any proceeding has ever been taken under that act to require the necessary facilities?

Mr. COWAN. Well, I could not state to you that there has.

Mr. BUCKLAND. In other words, does not the law sufficiently provide for this as it now exists?

Mr. COWAN. No; the law does not provide for furnishing cars specifically. It requires that the railroad shall furnish the transportation upon reasonable request, but the law does not say when, and the law does not say what a reasonable request is, and the law does not say what the duty of the carrier is when the request is made, except that it leaves it entirely to an undetermined, uncertain interpretation of the question as to what is reasonable without even fixing *prima facie* what is reasonable. So that the shipper who desires to ship off the line of railroad has no better knowledge of what he may expect of the railroad, and has no better way of commanding the railroad to do a particular thing, than if that law had not been enacted.

Mr. BUCKLAND. But that interpretation is in the hands either of the Interstate Commerce Commission or of the district courts, and a failure to obey it subjects him to a \$5,000 penalty.

Mr. COWAN. I disagree with the proposition, if your question involves the proposition that the railroad company will be held responsible for a misdemeanor under section 10 of the act for failure to furnish, upon reasonable request, the facilities for transportation.

Mr. BUCKLAND. Have you ever brought any proceedings under it?

Mr. COWAN. No; I have not, but the ground which you gentlemen would be very ready to urge and get sustained if a case were brought is that the law can not penalize a railroad company for charging a rate that is unreasonable, unless the law in some way fixed what the reasonable rate is, at least, *prima facie*.

Mr. TOWNSEND. I am glad this question has been brought up, because that is the question I raised before with one of the witnesses in the case, because I have felt myself that the law was sufficient, and I was wondering if you had ever invoked the law, or if anybody has invoked the law. Now, to go a little further, if I may be permit-

ted, you say because the word "unreasonable" is somewhat indefinite. Of course the whole authority that the Commission has for fixing rates is on the ground that Congress has said that rates shall be just and reasonable, and it simply authorizes the Commission to carry out that ministerial duty of finding what the just and reasonable rate is. So it rests with them to determine all that question, does it not?

Mr. COWAN. Yes, sir.

Mr. TOWNSEND. Subject, of course, to the interpretation of the court as to whether they had fixed a reasonable rate or not. Now, is not that sufficiently definite, section 10, to interpret what a reasonable time shall be, if you use the words "reasonable time?"

Mr. COWAN. I do not think so, Mr. Townsend.

Mr. TOWNSEND. I would be very glad to have you explain that.

Mr. COWAN. I wish it were so. A penalty statute must be certain enough so that when the jury finds the facts the law fixes the penalty. For example, to illustrate precisely what I mean, the law says that all rates which are unjust and unreasonable are unlawful. That is to say, any carrier who charges an unjust and unreasonable rate has violated the act to regulate commerce. Now, section 10 fixes a punishment, calling the crime a misdemeanor, for the violation of the provisions of the act; yet it has never been considered anywhere, that I know of, by anyone connected closely with the attempt to enact these regulating laws, that you could fix a penalty for charging an unreasonable rate, when the jury who tries the party must determine whether that rate is unreasonable as the basis of fixing the penalty.

If that were the case the jury would be the body which fixed the rule of conduct, the violation of which is the crime. That reasoning applies, to my mind, in answer to the question by Mr. Buckland, that you can not invoke section 10 and fix a penalty on a carrier for not having provided the facilities of transportation upon reasonable request, as it is required to do by the statute. The crime must be somewhat more specifically defined. The jury in the case which he puts, in one case, take it probably in a locality where they were feeling somewhat outraged by the sort of service given, would say that this request, having been made two weeks before the cars were to be furnished, was reasonable, and that being so we hold you guilty of a misdemeanor. In another case the jury says that the request made ten days is reasonable and they hold a company liable for a misdemeanor. Then we come to another community and we find a jury holding differently. So the result is that he is guilty according to how the jury construes the meaning of a word. And so it would be if the carrier were charged with a misdemeanor for having charged an unreasonable rate. Until the Commission fixes the rate, you can make no penalty for charging an unreasonable rate. That is my belief of the law, and that belief is not merely a statement for the purpose of this case or this discussion here, but that is after very much discussion with a number of gentlemen, lawyers and others, Members of Congress, and particularly with members of the Interstate Commerce Commission. I have discussed that very matter with members of the Interstate Commerce Commission, and I understand them to believe that the law could not fix a penalty for charging an unreasonable rate, unless the law defines, in some way or other,

what the reasonable rate is. Just so it is with respect to the service mentioned in the provision of section 1 of the act, which requires the furnishing of the transportation within a reasonable time.

Mr. BUCKLAND. That section is practically of no effect to your mind?

Mr. COWAN. No, sir; it is not, because when you come to fix the civil liability at common law, the railroad is liable if the jury finds that the railroad has not furnished the transportation within a reasonable time. Likewise, it was always assumed—and has been by the Supreme Court of the United States, in theory at least—that the shipper was always entitled to recover his damages for having paid an unreasonable rate, and the court would determine whether the rate was reasonable or not for the purpose of fixing the damages in that case, but not for the purpose of making it operative in the future. I mention this opinion that I hold in regard to these matters as having been long formed in order that you may understand that I am not attempting to apply it merely for the purpose of this discussion, and I believe if any of you will examine carefully the entire history of the jurisprudence, with respect to the definiteness with which a crime must be defined, that you will find it would be entirely beyond the province of Congress or the legislature to declare that any act is a crime unless you sufficiently define what acts would constitute the crime; and that the jury is not the judge and the executioner.

Mr. BUCKLAND. May I ask one more question? Then, assuming for the purposes of the arguments that the criminal penalty would not attach, yet in the cases which you have cited the gentlemen who have complained would be entitled to recover the full damages which they had suffered by reason of the failure of the railway company to furnish these cars upon reasonable request?

Mr. COWAN. I have not the slightest doubt of it, and have so advised my clients. I have advised them that when the law says they shall furnish it on reasonable request and the jury holds that a reasonable request was made, that the carrier is liable to the full damage. I do not question that, and I have never been in the attitude of saying before this committee at any time that we have not got a remedy at common law for the damages; but, as stated by Mr. Peabody, rather contradictory to what he had previously said—and while I am on that point I may call attention to it—that several gentlemen have said that if this law was passed it would furnish a means of rebating, and men would order cars when they did not want them. All that is stuff, because if a man orders a car when he has not got the stuff to ship, he gains absolutely nothing on earth by doing it, because this law does not provide for any penalty that would go to him or any damage that would go to him. He could not obtain any benefit whatsoever by doing it; and later on Mr. Peabody states that it is not the penalty that the shipper wants, but the shipper wants the cars. Now, that is exactly it. How long do you suppose it will take Mr. Johnson to recover, if he does recover, the damage that the Sante Fe company did him in the case I have mentioned? He first has to go and employ his attorneys. Of course he has to pay them. We are not in the habit of doing work for nothing. He is out the amount it cost him to prove his case. His case will be fought from the start. It is probably two years before he finally gets a verdict. When he gets a verdict, the jury are strangers to him. He does not live there; he lives

out in Kansas City, and the jury may give him a portion of what he is damaged. So that the remedy is inadequate.

If the law fixed what is presumptively, or *prima facie*, a reasonable time in which to furnish cars, the railroad company would undertake, as near as it could, to obey that injunction. People could rely upon it, and at all events, the obligation of the railroad to respond, if they did not do it, is not made any greater by this bill, except in the attorney's fees. Now, I say it is not made any greater. I want to correct that, and I intended to do it at a previous hearing, but have simply overlooked it. In passing the statute in Texas, the railroad attorneys insisted that we strike out the word "double" where we had double damages for cases of shipment of live stock or perishable freight, and it was in consideration, as I understood it, that they were going to agree to the bill that I said "That is all right. It is not damages we want; it is the cars that we want." And they also wanted to strike out the attorney's fees. I said "No; if you do not furnish the cars, you ought to make the shipper whole; that is all we ask. We do not ask any penalties outside of that;" and I wish to say to this committee that it is perfectly satisfactory, so far as I am concerned, as representing the live-stock interests that I represent, that you strike out the word "double" if you please, and leave it simply the damages, but leave the attorney's fees in, because if you do not do it, the man who ships one, two, or three cars will never have a remedy; the railroad company knowing that, will furnish them cars as they please.

Now, gentlemen, it has been stated before the Senate committee—I do not know whether it was before this committee or not—that roads like the Burlington, the Milwaukee and St. Paul, the Chicago Northwestern have furnished their cars, supplied an immense live-stock traffic, and moved it to the markets with almost no friction at all; almost none. Mr. McKenzie stated either before this committee or the Senate committee that in the shipment of twenty-odd thousand cattle last year into Evarts and the ranges in South Dakota and from there out to Chicago that he never missed loading an hour, never missed a market, never had a complaint, and never had the slightest difficulty. There is a road which undertook to serve the people who paid the money, and who did not say, "We are giving more service than these people deserve."

The great majority of mankind do not need regulating. You do not need a law against you for gambling; you do not need a law against you for breach of peace on the street. There are a great variety of things that the great majority of men need no law to regulate. The law is needed to make those do their duty who do not perform it, because if they perform the duty the law is quite immaterial to them, because they are doing already that which the law requires. The great majority of shippers of live stock, for the most part, generally receive a very fair service. It is for the instances where they do not receive it that a law is needed, and so it is with respect to grain, and so it is with respect to lumber. A railroad company ought not to have the right to say just what measure of service they will give to each individual—that is, generally speaking. There ought to be some general rule defined by law which will require a good service, and which, so far as practicable, will specify what that service is, and not leave it merely to the conscience of somebody who may be negli-

gent or who may not be held responsible to say what the measure of service shall be.

Now, take the cases mentioned by Mr. J. C. Lincoln before this committee, where the railroads in Iowa refused to furnish cars for loading grain for shipment beyond St. Louis. Why? Because a temporary condition existed and they thought it to their best interests to do that. I stated cases where the railroads refused to furnish cars for shipping grain south of Fort Worth. Why? Because they thought it to their best interests not to do so. And the reason they alleged is that they could not get the cars back. That has been the universal reason given for not furnishing cars to go off the line, and yet we have a statute which says that the railroad company shall furnish the transportation (as read by Mr. Buckland) at reasonable rates and through routes. Now, all we ask for in this case is that this committee report a bill which provides that the railroad company shall furnish cars to load the freight, tender it for shipment to the points to which they have the through rate, and to which the through rate is established. If the railroad companies do not want, as between themselves, to have the right by law to demand a return of the cars, then let it go. If they do not want to have the right to say to the railroad company to whom they deliver a loaded car, "You must give me back in a reasonable time an equivalent," all right; let them do without it. But it seems to me to be foolhardy for those gentlemen to come here who profess to know anything about the operation of a railroad and say that it is not quite proper and right to give them the privilege of demanding the cars back if they wish, a privilege which is not commanded to be exercised by the law.

Now, I noticed that Mr. Hepburn asked the question of one of the witnesses as to what evil effects would happen if a railroad company would deliver 30 loaded cars to another road and the railroad to whom the cars were delivered should be compelled to deliver back 30 cars to the road which delivered the load, whether it wanted them or not. Well, such a law certainly would be very foolish, and I should never dream of preparing or proposing such a law. The second section of this bill simply offers the opportunity—that is, simply gives the right to the railroads to demand back the equivalent should it desire it; and if it does make the demand, then the duty becomes operative. I have been really astonished in reading over the evidence to see that during all of the proceedings before this committee almost every man, if not every one, representing the railroads has acted upon the assumption that this law commands a railroad company in all cases to load its own cars to go off its lines and that it does not give any right to demand back its own cars, and that it loses control of its cars. And one of the chief objections urged to this bill by several gentlemen was that the railroad company would lose control of its cars. Not at all, because the law itself provides that every owner of a car, whether it is a railroad or not—and it may be a private car line—has the right to demand delivery back in a reasonable time and makes the railway company liable for damages and attorneys' fees, and I had supposed that the railroad men might suggest even a penalty in such a case. Of course, the Pennsylvania Railroad would have no right to demand back a return of the identical cars belonging to the New Haven and Hartford, but they would have a right to demand back a return of the equivalent.

If the arrangements between the Pennsylvania and the New Haven and Hartford were such that the Pennsylvania people were given that right, of course they would have that right, and I would assume that in the operation of this law the railroads would very quickly provide for those rules. The difficulty has been the failure of car performance, and every man who is educated upon this subject and who has gone into the detail of undertaking to find out the difficulty about the car supply of the country has said that it is not a question of shortage of cars that is the cause of all this trouble, but it is the difficulty of getting car performance, the greatest of which is the inability to get cars returned; in other words, the stealing of cars by somebody. Now this bill was intended to entirely prevent that, for we thought that if we proposed that Congress should pass a law which requires a railroad to furnish cars which go off its lines, by a distinct enactment, to points where through rates apply, that it was nothing but just to also provide a control over those cars upon the mere demand from the delivering line.

MR. BUCKLAND. May it not be very frequently the case that when the tide of traffic with reference to a certain commodity, as, for instance, cotton, is all going in one direction that it will be impossible to turn that tide the other way and get back car for car, until the tide has begun to flow the other way?

MR. COWAN. No. I will answer you with knowledge on that subject, Mr. Buckland. Let us take some examples of the movements, and that will illustrate it a little better.

MR. BUCKLAND. I know better about cotton.

MR. COWAN. I will take the case of cattle. You load cattle in the Pan Handle of Texas, or you load them in western Montana, for Chicago. There is no return loading for the stock cars for any considerable distance. There are certain seasons of the year when live stock moves more freely and other seasons when they move less freely, and those things are perfectly well known to everybody living in the country, and are well known to the agents of the railway company, and they are supposed to provide for those things. Take the Northern Pacific, with 1,200 or 1,500 cars. It must undoubtedly get additional cars in a heavy movement, say in August, for the ranch cattle that have been fattened for the market; and you take the 200,000 or 300,000 cattle which are to be moved in the course of three months, and the Northern Pacific would have to get additional cars. Those cars have always been obtainable either from connecting lines or from the car line companies, unless they were put in other service. Now, you can not ship the cattle in any other car except a cattle car. You carry a train in a reasonable time from Billings, Mont., to Chicago in about four days. Those cars are unloaded in very short order. They are carried in from St. Paul over the Burlington. The Burlington runs them in over their scales and weighs them and carries them right out to the Burlington yards, and that is going on on 20 or 30 trains a day. The cars have to be handled somewhat in the manner that this bill provides for now, because the railroad company bringing the live stock into St. Paul and turning it over to the Burlington road, there to be delivered in Chicago, must keep its road informed as to the number of cars required. And you take the Burlington, which reaches Chicago; they could only resort to their own cars ordinarily, or to the cars of the private car line companies,

which are scattered all over the United States. You all have seen them everywhere you have traveled. The constant flow of the cars back keeps them supplied.

Mr. BUCKLAND. Do they come back when the tide is against them on a single-track road?

Mr. COWAN. Oh, yes; there is no trouble about that.

Mr. BUCKLAND. You have perishable freight coming one way which has to be expedited, and as against that you have empty cars going back, and the same reasons for expedition do not apply, because the cattle have got to go to market.

Mr. COWAN. There is not a great deal of difference in the time of the schedule of the cars going back and the cars coming to market, if a reasonable and proper service is given. They will haul in on the Burlington 40 cars, and the same locomotive will carry back 50 or 55 empties, and it is oftentimes that these empties, however, are divided up between trains which have more or less freight, but the round trip ought to be made in twelve or fifteen days in the ordinary course of business, without any special expedition of the car going back. The shipments now from the Pan Handle of Texas going, say, to Kansas City, should take only thirty-six hours. They ought to go through in thirty-six hours without unloading, and the railroads all profess that they would do that, as this committee knows, if they would pass a thirty-six hour law. These cars go to Kansas City, and there are thousands of cars there all the time, and each railroad has its yard, with a large number of cars, and they are sending them out according as their best interest would seem to indicate. Sometimes a solid train of live-stock cars will go back full of live stock, but as a usual thing they go in trains mixed, more or less, but the crews have to return anyway, the locomotives and cabooses have to go back over each division, so that in the course of the business after the movement starts freely the stock cars are going back and forth. They have always done so except the last two or three years, and in the last two or three years the use of the equipment in other lines of traffic has undoubtedly lessened very much its potentiality as stock-car equipment, and the railroads having no obligations fixed by law as to just what they shall do have fallen very far short, as Mr. Low confessed, of having furnished a good service in that particular.

Now, whatever their interest might be and whatever they ought to do, we have undertaken to put before the committee the proof of what has happened. The Interstate Commerce Commission made an investigation and made a report as to what was happening. We have referred to all of that, and have not attempted to burden the committee with reading it, but some of it has been copied and introduced here, and I have assumed that the committee, if they desire to do so, could ascertain just what had been happening with respect to all the other freight as well as live stock.

Mr. BUCKLAND. On that question of the attorney's fees, have you considered whether or not the act as you have drawn it offends the doctrine of the Santa Fe Company against Ellis?

Mr. COWAN. I do not know whether that case is the law. You know they decided the Kansas fire case the other way apparently; and yet, there is a distinction in the two cases. The one singled out the particular amount. That is, where it was a suit for less than \$50,

there should be an attorney's fee, whereas in the Kansas case it was for all cases of setting out fires.

Mr. BUCKLAND. But the Ellis case did not go off on that point, that it was limited.

Mr. COWAN. I do not think that is the case. If it is, we must say that the interstate-commerce act is unconstitutional, and so is the antitrust act, and I should say that if you can show that providing for attorneys' fees makes the law unconstitutional that you could get a mighty good fee, if you are open to take it, from the Standard Oil Company on the appeal they have regarding that \$29,000,000 fine. If the law is not constitutional, they would not be subject to the fine, because they are liable for the penalty and the attorney's fees. But that was not the case with the Texas act and the Ellis case.

Mr. KENNEDY. What part of the Constitution was it held was infringed upon?

Mr. COWAN. Equal protection of the law, the fourteenth amendment. I have not read the case for a long time, but I assume that this does not violate that.

Mr. KENNEDY. It would not be unconstitutional if the attorney's fee was distinctly put in in the nature of a penalty.

Mr. COWAN. And that is what this bill does.

Mr. KENNEDY. For failing to do something they ought to do.

Mr. COWAN. I undertook to avoid that by putting it that way.

Mr. ESCH. There are two points in regard to Peabody's testimony that I would like to ask about. On page 139 of the report of the hearing you will notice that Mr. Peabody put the list of Mr. McKenzie's shipments, showing that he always ordered more than he required, and he made the argument as a result of that that the railroad was put to unnecessary cost in the transportation of extra cars, which had to be hauled back.

Mr. COWAN. I have that as my first point.

Mr. ESCH. Very well.

Mr. COWAN. In regard to Mr. Peabody's statement, those cars were ordered for shipment at Estaline from the Fort Worth and Denver City Railway principally. Estaline is a very large shipping point, and during the time Mr. McKenzie would be shipping, if the railroad was furnishing the cars that the people would want to ship from there, there would be hundreds of cars constantly at Estaline, because the railroad company does not attempt to deliver the cars on the exact day that the shipment is to be loaded. They may be there two or three days ahead. As some of them have testified, they are now accumulating cars in the Panhandle for the purpose of moving the live stock to the northwestern ranches. Naturally they have to do that; and so it is in the cases of cotton and everything else. We must not assume now that a car is taken to a place for a specific shipment of live stock. The Estaline record of the Fort Worth and Denver City Railroad Company will show that that day they had four or five times as many cars ordered as Mr. McKenzie had, all for that day and the next. Mr. McKenzie puts in his order for the number of cars that he thinks he will have. Now, let us see when he ordered them. The first order was May 4 for loading on June 1 for Evarts, S. Dak., to go over the Rock Island road by way of Delhart. He ordered 25 cars. He canceled that order. It does not show the date, but even if the cars had been delivered there, it would be dead

certain they would be used for somebody else shipment. The next order is destined to Swift Current, S. Dak., and I am not certain if that is not Canada, 25 cars. The number he shipped was 23 cars on June 8. That was the same order; he shipped on June 8.

Now these cattle had to be gathered out at the range 60 miles away. Now you bring in 25 cars of cattle according to your judgment of loading. Your man who is loading these cattle will make it what he thinks will ride well in a car. These cattle are not subject to exact measurement, and you can not tell what space they will take up until you put them in the car. These were probably 2-year-old steers, and being this time of year, they were poor, and when you load them in, you probably figured at the start that you could load 33 cattle to the car. You notice also that the length of these cars is not specified in the order. Now there are 34-foot cars, 33 feet 6 inches, and 36-foot cars, and occasionally some 40-foot cars for live stock, and a good many of them are coming in use now. Now the railroad company delivers those cars there. Of course, I do not know the explanation of this particular case, but I know that when you come to load the cattle it is to the interest of the shipper who is shipping on a per car rate, and not per hundred pounds—it is to his interest to load the car comfortably full, so that in the taking up of the slack and the movement of the car, the cattle will not be thrown about, but will be comparatively snug in the car. After your man has loaded these cars, he will see that he ought to put in a couple more head of cattle, and then also he may have expected, we will say, 34-foot cars on an average when he may have gotten all 36-foot cars, and you can readily see where one or two cars may often be left. Now, if he makes a mistake against himself and carries into that station 26 carloads of cattle instead of 25, he is left there, 60 miles from his ranch, with one carload of cattle for which he has got no car.

So you can readily see that a man in loading a large number of cattle will naturally order on the safe side. It is perfectly legitimate, and is done all over the world, and has always been done, and there is absolutely nothing to that in the way of any intent on Mr. McKenzie's part, or anybody else, to make an improper order for cars. Furthermore, at either Estaline or Colorado City or Murdo, these cars would be readily used for somebody else's cattle, who had ordered cars during the season, and they may have been there two or three days, or may have gotten there just a day before the day they were ordered for, or the day the shipment was made. Now, if you will notice, in this order you will see that ample time was given in all cases for furnishing the cars. I do not know whether these cars were furnished or not. Neither did Mr. Peabody. I believe the question was asked Mr. Peabody as to whether these cars were all furnished and he said that the full quota was furnished in each case. Well, I am perfectly certain that Mr. Peabody did not know one thing in the world about that, because he got this information by writing to the general manager of the Fort Worth and Denver Railroad Company to furnish him the list of the cars Mr. McKenzie had ordered, and the cars shown here are the number ordered and the number of cars that he loaded. So I apprehend that if that were thrashed out, you will find there is nothing to it. But it must always happen that men do order a car or two more than enough to take care of a large shipment, because if they do not, they will be

left at the shipping place with a carload of cattle; and then the railroad company does not purport to furnish cars of certain dimensions, and, as I explained to you, there are 33 feet 6, 34 feet 6, and 36 foot cars which are the usual cars that are furnished. So that it would depend somewhat on the sort of cars. But there is no hardship going to grow out of that at all.

Mr. ESCH. The other point was this: In explanation of the use of cattle cars on the Santa Fe, and especially on the Pecos Valley line, he said that they loaded ties, bridge timber, rails, and cattle guards, because they were reconstructing the Pecos Valley line and had to utilize the cattle cars on return haul. That is, as I recollect, his testimony.

Mr. COWAN. Yes, sir; that was perfectly true, although Mr. Turner said they did not do it. I saw them myself, and it was quite the proper thing to do. It would be to the advantage of the live-stock traffic that the railroad companies shall be able to use their live-stock cars for the purpose of return loads wherever that can be done. But in order to do that, Mr. Esch, they would be required to furnish a larger number of cars than they have now if they utilize them for that purpose during the season when live stock are most moving. Now, let me refer you to what Mr. Peabody said at another place on that subject. He stated his reasons for using the cars for loading material of this sort. I happen to know that they ship a vast amount of brick in stock cars. They made a very low rate on brick to Amorilla, and they shipped brick in the stock cars very extensively. The movement of brick would be a very slow movement, and it would put the car out of use for three or four weeks. The Rock Island Company also had a contract by which they were furnishing 8 cars a day to a certain coal mine, and that evidence is in here; and that put the car out of use three or four weeks. That, undoubtedly, was constantly done. But, Mr. Peabody says, and Mr. Kennedy put the question:

These live-stock cars are not used exclusively for live stock?

Mr. PEABODY. Oh, no; although they are kept for live-stock use, and in a very large number of cases they are. When live-stock shipment is offered we rush the cars to destination without ever trying to get loads for them.

As I have already explained, these orders are put in a very long time in advance now because the stockmen know that they can never tell when they are going to get the order filled, and, although he says it is necessary to load them on the return movement, he also says when they get orders for shipments they rush them through without it. The fact is that both are somewhat true. In the examination of some hundred of witnesses connected with the cattle-rate case in the Southwest, I think I learned all about the things that actually happen, beside my knowledge gained by living in the cattle country and representing cattlemen for twenty years, and I guess I know a good deal more about the way it actually takes place than he does, and the fact is that the railroad companies attempt to load their cars on the return movement, but that has been carried to the extent of permitting, when they had a large volume of traffic, the live stock to be greatly sacrificed by the attempt of a division superintendent, or a local yard man, or a superintendent of terminals to load back as much of the equipment as he could, and if the railroad company will procure a sufficient supply of stock cars, so that they can always do that, it undoubtedly would be a matter of economy to do it, but they

have not yet done that, although they are progressing in that direction.

I wish to say in that connection that this law will in no wise prohibit a railroad company from loading for a return movement. It does not require them to furnish any more cars than they furnish now. It requires them to furnish the cars without having permitted the loss of capital, of accumulated labor, and of the returns that a man expects for his year's work. The promptness with which some of the railroads are handling the live-stock traffic shows that it is perfectly feasible. These roads are not operated under any more advantageous conditions than others, but perhaps they are operated somewhat more wisely, and it is the defined duty that we want Congress to fix in order that all will feel impelled to perform that duty.

I will refer now to Mr. Peabody's proposition contained in his statement on page 141. He is complaining because there is no reciprocal penalty for not using a car when it is furnished. For example, in Mr. McKenzie's case, where he ordered more cars than he needed. As I undertook to say, he did not order more than he apparently needed. It was impossible to come so close to it for the reasons I have explained. Mr. Peabody said:

I venture to say that if, as is the case with the Texas statute—

He is referring to the one I told you had been by implication repealed and been held inapplicable to interstate traffic. (Continuing.)

the shipper when ordering cars was required to deposit 25 per cent of the freight charges as a guarantee that the car would be used, the railroad would offer no objection to the so-called reciprocal features of this bill.

Now, if he was speaking by authority, I would accept that proposition and would not go any further. I would accept that proposition, and we would not go any further. But that penalty statute was never made use of by a railroad in a single case in Texas. It can not, in the nature of things, be done, because in the conduct of the business there must be so many cases where there is negligence in furnishing cars, negligence in the transportation service, that nobody ever attempts to recover anything for it, where if a railroad company should undertake in local communities to punish the shipper for having made a mistake as to the number of cars he ordered, or sought to invoke a penalty of that sort, it would arouse the people in the local neighborhood, and it would be a very foolish policy; but if they want to put in this statute a reciprocal provision of that sort, for the Cattle Raisers' Association and the American National Live Stock Association, the largest body of stockmen in the world, I accept the proposition.

But Mr. Peabody does not know what he is talking about. There is not a railroad lawyer in the country that would accept any such proposition, and I believe Mr. Buckland will bear me out in that. I have represented a railroad company myself, and I know it would be utter foolishness. We do not ask any penalty except that which will make the shipper whole in a given case. We do not want a man to get a penalty because the railroad companies fail to supply the car if the penalty is not somewhat adequate to the injury caused the party, and this statute was drawn with the view of making it automatically applicable to the injury, in the best way we have got of determining what that would be, so as to make the shipper whole.

If he has not been damaged, there is nothing for the railroad to pay. Mr. Peabody, at page 142, said:

On one occasion the Santa Fe road hauled about 700 stock cars from Chicago and Kansas City to Texas, and there delivered them to a connecting line for loading, and next received them at Kansas City empty, they having been hauled loaded to that point by another line, from which point we were obliged to return them to Texas empty the second time.

Well, he certainly does not blame the proposals in this bill for that.

Mr. ESCH. The proposals in this bill would have prevented that?

Mr. COWAN. Exactly.

Mr. ESCH. And would have made those cars or their equivalent come back to this line?

Mr. COWAN. Yes, sir. I will tell you how I suppose that happened. At the junction point of the Texas and Pacific Railroad in western Texas, along in that country there are a great many cattle raised on the line of the Texas and Pacific and shipped up the Pecos Valley, some going to Montana and some going to Kansas pastures. Sometimes they get fat enough in the fall to ship to market. The Texas and Pacific Railroad Company canceled out its rates in April, 1904, with all connecting lines on live stock, because it did not want to let its cars go off its lines, and they accepted the Texas commission local rate to the junction point, and they would not let the cars go, and so you had to unload your cars. Now, the Santa Fe line had an arrangement with the Texas and Pacific whereby they were furnishing empty cars at Pecos to be taken down on the line of the Texas Pacific loaded and brought back and carried over the Pecos Valley line. There were very little shipments on the Pecos Valley line on the south end of it at that time, and they were anxious to develop traffic, and so they absorbed the local rates on the Texas and Pacific and put in through rates, or rather, they protected it, as they call it, and the shipments would move west by way of Pecos and by way of Amarillo to Kansas and the northern ranges, and I was told by the live stock agent of the Pecos Valley line that they had quit furnishing cars to the Texas and Pacific road because they would get the cars and then load them to ship in the other direction and run down by Fort Worth and connect with the Missouri, Kansas and Texas, and the Santa Fe would be in the position of having delivered them to the Texas and Pacific and never getting them back. That has been going on in Texas for a long time. It has been going on at all the points north of Texas to the Canada line, wherever there is a junction point with another line, and that failure to exchange the cars is what destroyed a potential part of the stock cars of the country.

Now, just in this connection I want to refer to another point made by Mr. Peabody at page 147:

■ The panacea for all the troubles that the live stock men are heir to, as suggested by this bill, appears to the proponents thereof as both simple and effective, but let us see how it will work out, taking as an example the Fort Worth and Denver City road, where a majority of the live stock shipments complained of originate.

That is incorrect about the majority originating on the Fort Worth and Denver; but I will proceed with the reading:

That road has, according to Mr. Cowan's figures, a total of 248 stock cars, all of which would be easily exhausted in a single day's demand.

Now, those are not Mr. Cowan's figures, but figures taken from the annual report that they reported themselves to the Interstate Commerce Commission.

All of which would be exhausted in a single day's demand.

Exactly true; and if they furnish them to-day to go off the line, they would be exhausted for good, and would not have any right to get any cars back from the Santa Fe, and that is the reason they would not furnish any cars to go on the Santa Fe road, although they were loaded within 50 miles of the junction point. You have got to load your cattle and unload them and then take your chances as to whether the Santa Fe will furnish you the cars or not. They have got a through rate to Kansas City and also a through route to Kansas City, and if they can get a foreign car, as they do get many of them on their lines, loaded with various stuff, they will load the foreign cars to go on another line; but they won't let their own cars go off the line, and so the foreign car becomes a general-utility car.

Now, this bill would just simply prevent the very thing that Mr. Peabody says it would cause, if the Fort Worth and Denver Railroad desired to demand back an equivalent in cars. In the course of things, we must not suppose there will be a demand made for every shipment, but the rule established by the attorneys for the railroads, under this law, would be a general rule, and that rule would be acted upon sensibly just like business men would do a thing, by weekly demand, and in time of rushes possibly, by daily demand. They make those demands to-day wherever they operate a through route. I will refer you to a statement made by a representative of the Frisco—I do not have it in my hand so that I can refer to it just at this moment, but he said, "We are already operating according to the provisions of this law, except in a few instances. Those exceptions will be where the Frisco connects with the Fort Worth and Denver at Vernon and Quanah; that as the Fort Worth and Denver won't let their cars off their lines, the Frisco will not operate under this act." And so it would be with the Texas and Pacific at its connection at Fort Worth.

Now, mind you, this is not confined to Texas. Take Denver. Stock men operating in Utah and in all that western country, would not attempt to ship through Denver because the railroads require an unloading and refurnishing of cars at Denver, and as Mr. de Ricqlès showed, either before this committee or the Senate committee, they will bring in a train load of lambs over the Santa Fe to the Denver yards and will not let them go on the Colorado and Southern up to Greeley or some other place north of there where they can make the run in a couple of hours, but they require them to be unloaded, and they have to take their chances as to getting cars to carry them on. Those things are happening all over the country wherever there are junction points of different lines.

Now, Mr. Peabody speaks, among other things, about the trouble they had with oil. He said a man ordered, under this Texas statute, a number of cars to ship oil from Beaumont to Dallas, and that he did not have any oil. There is every sort of speculator on earth in Beaumont, and I would not be surprised if there are not some members on this committee who have felt the effects of that. But how could the man get the better of the railroad by the deposit of 25 per cent of

the freight and ordering cars if he did not use them? He got the cars and did use them. He was a speculator, and the oil was carried to Dallas. The railroad company got the freight and the fellow lost his oil. What has that got to do with this bill? Nothing in the world; but it just shows that Mr. Peabody is undertaking to show what injurious things happen to the railroads in the course of the business of people ordering cars. But it seems to me that the railroad company was the only concern that got any benefit out of that case at all. They got their freight and the fellow lost his oil.

Now, Mr. Peabody said some very surprising things. Mind you, I am not charging the officials of the Santa Fe Railroad Company with being responsible for his statements, but I can not let them go without showing how incorrect they are. In answer to a question put by Mr. Esch, he said:

Of course the building of the country developed a large business for a railroad; but it is not the cattle business that developed the country.

The entire West was first developed by the cattle business. There is no question about that [continuing]:

Those cattlemen wish we would stay out of there with our railroads so far as developing the country is concerned.

That is a most unwarranted statement. It is absolutely a mistake, to put it in the mildest terms that I possibly can. It is simply fighting at the air. The cattlemen came into the country; they developed it; they fenced it; they bored the wells, and they showed what it could do. They bought the land from the railroad companies to whom the State of Texas gave it by the millions and millions of acres, improved it, made it possible for other people to live there, and moved out into that country and developed it, and learned that they could grow other stuff there; and the cattleman is prospering because of the fact that his land has gone up in value, and you probably can not find a member from Iowa that is not interested in some sort of speculation in the Panhandle land, and they are doing more in that direction than anybody else except the railroads, and they are all working together in the direction of populating the country, and so it has been all the time. There is a perfect community of interest, so far as real interest is concerned, and there always has been, and it is all stuff for him to come here and talk about the cattlemen having been opposed to railroads and opposed to development. It is entirely untrue in every particular. Just exactly the reverse is the case.

Mr. ESCH. The only point I thought that was made was that by increasing the population it destroyed the ranges.

Mr. COWAN. That would seem to be so. But it does happen that the country that is most thickly settled and that can grow the most grain and hay produces the most cattle. Look at the great State of Iowa, as an example. Take the assessment rolls of our State, and, as I pointed out in an address to the Cattle Raisers' Association at San Antonio a couple of weeks ago, reading from a paper which was a list that happened to be published that day of the returns to the assessors of cattle, I find that Harris County, the county which Houston is in, there are more cattle upon the assessment rolls of that county than in a number of Panhandle counties which are devoted exclusively to the raising of cattle. The western country will or-

dinarily support one head of cattle to 10 acres. The Texas legislature so considered it and allowed a man purchasing school land to turn loose one head to 10 acres and four head of sheep. Now, when you settle up the country and begin to produce food crops, the man in one section of land will have 100 head of cattle instead of 64 and will be keeping them better. As an example of that, the tax assessor of Mitchell County, Tex., where Colorado City is, the county which, twenty years ago, was exclusively a cattle county, being in a district that I used to be district attorney of and knew well, told me that there were more cattle in Mitchell County to-day than there ever were, and yet they will ship probably 25,000 bales of cotton from Colorado City. So that in the settlement of the country the business is still there, and that is not only the case through Texas but on through all the country west of the Mississippi River. Kansas is a great cattle country, and thickly settled, and yet it raises an enormous amount of wheat and grain. But we have got the best breeding ground as you get further south.

So Mr. Peabody is entirely mistaken that the cattle business disappears when the country settles. It does not. There may be localities where it does. I would not dispute that; and ultimately it might entirely disappear if you raise only cotton, and yet cattle are fed at every cotton-seed oil mill in the country. So in Oklahoma, there are a great many more cattle there now than there were fifteen or twenty years ago when it was devoted almost exclusively to that one business. I have been told so, and I believe that to be true.

Mr. Peabody further stated that he had entered into a careful examination and computation to ascertain the relative earnings of cattle and other freight, and then he goes on to show that it is more unprofitable than other freight. Mr. Peabody attained his reputation by starting in for the Santa Fe Railroad Company to undertake to prove that the advances made in the cattle rates from all that southwestern country to the market were justified, and he worked up the most elaborate set of figures anybody ever saw, and brought in traffic men from all over the country, operating men and everybody else connected with the different roads, and probably had a hundred witnesses altogether, in order to prove that the live stock business was not profitable. His theory was absolutely and completely exploded. The case was put before the Interstate Commerce Commission and they decided that the advance in the rate was unreasonable. That was decided in August, 1905, and I have a copy of the decision here. They also turned down Mr. Peabody's theory and adopted the theory of the complainant, which was worked out at great labor on account of the difficulty of procuring the information, and which showed that the cattle business pays more per car mile, per ton mile, and per train mile than the average of freight on any system of railroad west of Chicago and St. Louis. That was demonstrated beyond doubt and could not be denied, and never was denied in argument.

The Commission found what the extra expenses were per car on cattle as compared with other freight, with respect to those expenses not common to both, and the difference was only about \$2 a car. So it was with all of his figures in that particular. I only mention it because it appears that there was an attempt here all the way through to show that the cattlemen were prejudiced; that they were

not entitled to any relief; that they were not stating the facts about what transpired, and that they were not paying enough anyway, and that they ought not to have anything and ought to be put out. He stated I was engaged in collecting information for a great length of time with respect to this bill, all of which is entirely untrue. There is not a word of truth in it. When the Interstate Commerce Commission went out to investigate the car shortage, I went to St. Louis where Commissioner Prouty held the first hearing; put our witnesses on the stand, and again at Kansas City, and he heard evidence until he got tired and did not want to hear any more, and I refer this committee to Senate Document No. 233 of the Fifty-ninth Congress, second session, for a report of that testimony. It not only applied to live stock, but I sat by and heard the testimony of the witnesses respecting lumber, coal, grain, merchandise, and the like, and they introduced my witness with respect to the live stock. I asked them in Senate last winter when this bill was there to have that evidence produced. They called for it and printed it. The railroads were present and they had a chance to cross-examine.

I have prepared a statement of some of the other errors which I think have been committed by the witnesses in discussing this bill, thinking that the time of this committee might be short, and there are nine pages of the statement which I should like to file as my remarks in answer to what some of the other witnesses have said.

Now, gentlemen of the committee, in concluding this statement I wish to say that it has been assumed that we are proposing to regulate the railroads' business; that the laity propose to come in and attend to the railroad business. That is entirely untrue. We are undertaking to get our own business properly done by the public agencies of the country whom we pay to do it, and to have a rule which defines what they ought to do as nearly as possible, and in all other particulars to leave it to the Interstate Commerce Commission to say what the rule ought to be, being ourselves perfectly willing to pay what that Commission says we ought to pay to have the sort of service which this Congress shall say we ought to have, and which the Commission shall say we ought to have.

This Congress ought not require the principle of the initiative and referendum in order to enact a law of this sort. Almost every State in the Union has undertaken to define, with some sort of definiteness, the obligation of railroads with respect to the matter of furnishing cars. It can not do it with respect to service, except to say that the service shall be reasonable; but Congress can do it by giving the Interstate Commerce Commission the power, when the necessity arises, to somewhat regulate the service. On that account, we have said that the Commission should be empowered to prescribe a reasonable speed limit, where that is necessary to secure a reasonable transportation service. With that in the law, the Commission will never exercise it, at least only in the rarest instances, and they will certainly never do it except the hardship is such that it ought to be done. If we had only such men as Mr. Buckland leads me to believe he is, we would get along all right, because we would never have any trouble with him, if he acts the way he talks.

Now, gentlemen of the committee, it was thought at the beginning of this Congress that no law could be enacted because of the approaching election. We all know what people think and what they talk

and when this bill was introduced and people were in correspondence about it, they thought that possibly nothing could be done. I caused copies of this bill to be sent out to several hundred organizations with the request that they write their Congressman in regard to it. I know that the country needs some law upon this subject. I do not believe that a better bill can be drawn than upon the theory that we have. I have no doubt that this bill in its language can be improved upon. Now, if the railroads desire to do that which they profess before this committee and the Senate committee, namely, to give a good service and to give a reasonable service, and if the railroads are performing that service to-day which they have stated before the Senate committee, and probably before this committee, owing to their present ability to perform it because of the falling off in the traffic, they certainly ought not to object to Congress defining the rules under which is ought to be done, and under which in the future they shall perform, and if Congress prescribes the rule they will perform the service with just as much profit to themselves and probably more than they would now without it.

The idea of self-interest on the part of a railroad, being operated to secure a good service, is of no more weight as an argument than was the argument of self-interest to secure just and reasonable rates, and during all of the argument before the committees of Congress on the rate bill that was elaborated upon day after day and day after day. Self-interest is not an applicable term to a corporation. There is no self to a corporation except the desire to make money, for which it is organized; but there is no self to have the thought.

A multitude of things takes place with respect to the furnishing of cars for shipments of grain and merchandise and cattle, and in the method of handling them, and the place from which they are willing to load and the place to which they are willing to ship. The employees of the railway companies, like other people, are negligent; no more so, no less. It must often happen that if no one has to respond for the negligence, if no one has to answer for it, they will be the more negligent. Self-interest is the self-interest of the individual directing the particular thing to be done, and if you put in an order to the local agent at my place that local agent may want to serve someone else. For aught the law of Congress provides, he may do it, like the case testified about by Mr. Parramore, where the agent of the Texas and Pacific Railway Company at El Paso sought to steal ten cars and sell them to him at \$10 per car, and he told him that he had never stolen anything yet and he be durned if he was going to engage in it now. Hundreds of instances have happened, and every lumberman in that country can testify about different contrivances by which men have been able to get cars for shipment by tipping this one and that one. Of course, no railroad company has a self-interest to do that; no management wants to do it. I only instance those things to show you pointedly that the idea of self-interest can not operate to secure a good service, because there is no head to the self-interest. If I own the railroad myself and I am directing it, it would be just as impossible for me. I could say that I want results, and that I want to make the most money possible out of the business, and that is what the directors of the corporation are supposed to say, and I quite agree with Mr. Adamson—perhaps not in the fullness of his expression, because I

do not recollect just what it was—that one of the difficulties is the directing of the policy of the railroad by regulating railroad men themselves.

Closing my remarks upon this subject, I wish to read a letter, or part of a letter, from the Receivers and Shippers' Association of Ohio, and to file some other letters from important shipping concerns, asking that this bill be reported out and enacted.

The letter I desire to read is short, and is addressed to the secretary of the Cattle Raisers' Association, Fort Worth, and is dated Dayton, Ohio:

We are in receipt of yours of the 2d instant in regard to the proposed legislation during the present session of Congress, and beg to state that we are thoroughly in accord with your wishes in this matter, and will do everything possible to secure the enactment of legislation along the proposed lines. We have also requested our Senators and Congressmen to favor the proposed amendment preventing the advancement of rates except on approval of the Commission.

Will you kindly advise me who is presenting the new law as outlined in your letter? As soon as it is presented we will proceed to bring all of our influence to bear upon our Representative, and have him carry out the wishes of the business interests of the country.

W. B. MOORE.

I have some other letters which I wish to file, and I wish to say in regard to Mr. Townsend's bill in regard to the preventing of advances in rates, that has been indorsed by every live stock association in the West. It has been indorsed by the Trans-Mississippi Congress, and in my belief it is desired by the people throughout the entire country. I do not believe there can be the slightest doubt of the power of Congress, and I certainly have no doubt of its duty, to pass such a law substantially in accordance with the recommendations of the Interstate Commerce Commission in its annual report.

It seems perfect foolishness to first require a rate to be put into effect before anyone can complain of what they know is going to be done about it, and all of the talk in regard to the injured parties being recompensed for what they lose, is mere bosh. For the most part the freight goes into the price of the article. The consumer all over the country pays it and can never get it back. The man that gets it back may be the very man that ought not to have it. Certainly that is done as to almost all manufactured articles shipped f. o. b. The consignee gets it and adds it to the price, and the people pay it. Then the impracticability of recovering reparation is such that anyone who has ever undertaken it knows that it is all stuff; that only a few large shippers can do it. Take for example, the terminal case in Chicago where \$1 per car was held to be unreasonable in 1898, ten years ago. Since the new law took effect, every live stock organization in the West has requested its members to send in their statements in regard to shipments. There have been collected \$3,000,000 of that terminal charge which the Commission has held unreasonable, and which is to take effect on the 1st of May. How many cars do you suppose have been turned into the Commission and filed? Not 50,000 cars which were provable before they were barred by limitations, and there will not be \$100,000 of the \$3,000,000 collected. And just so it is with all advances in rates. The small shipper gets no benefit. It is only the large shipper

that may recover reparation, and then, in most instances, the public has to suffer for it.

It is the opinion of all the traffic men not connected with the railroads that I have had occasion to talk to, and it is the opinion of all the shippers and those persons having business before the Interstate Commerce Commission, so far as I know, that such a law is imperatively needed and is demanded, and certainly can not hurt anybody, because the railroad company will get a prompt decision in such a case, and in the meantime they are only following out what they have said before is a reasonable charge.

I thank the committee very much for the opportunity of being heard.

(The committee thereupon, at 4.30 o'clock p. m., adjourned to meet Tuesday, April 14, 1908, at 10.30 o'clock a. m.)

Following are the memoranda and letters referred to by Mr. Cowan:

MEMORANDA OF POINTS SUGGESTED BY THOSE WHO APPEARED FOR THE RAILROADS BEFORE THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE ON THE SUBJECT OF CAR SUPPLY AND TRAIN SERVICE.

First. Several witnesses, Mr. Lincoln, Mr. Levy, and others, claimed that the enactment of this bill would increase the empty car movement. (See p. 62.)

These statements are based upon the assumption that the bill required a railroad to deliver empty cars for loaded cars, whereas the second section, being the section dealing with that subject, requires connecting lines to furnish, "within reasonable time after such loaded cars are delivered, as many cars suitable and which may be used for carrying such freight as may be delivered to it loaded by such connecting cars for the purpose of transportation over its line," etc.

The Commission is given full power to prescribe rules for "the furnishing, exchanging, and interchanging of cars, loaded and empty, by such railroad companies as between each other."

It is perfectly patent that the law does not purport to require the furnishing of only empty cars in exchange. Cars loaded for points on the line of the demanding road would, of course, be counted, as they are to-day, among the number to make up the equitable exchange.

Second. The most of the railway representatives assumed that this law would require more cars. (See W. D. Lincoln's statement, p. 63; Levy, p. 161.) Yet Mr. Levy states at page 158 that it takes two cars to make a transfer of freight at junction points when both of them ought to be moving. He further states that his road does not practice transferring the freight either going or coming.

He further states: "If eastern lines would drop their freight on us at St. Louis and transfer it, we would most assuredly have to haul cars in there to move it out." And again he states: "I am going to tell you that, so far as stock cars are concerned, the railroad I represent does exactly what this bill says, with one or two exceptions" (p. 160).

Since the Commission is empowered by the bill to make reasonable rules and regulations for exchanging and interchanging cars, and since the bill fixed no hard and fast rule with regard to it, and since the provisions of the bill in these particulars have been overlooked by the representatives of the railroads and they have assumed the reverse to what the bill provides, their arguments with respect to the increased number of cars which will be required and with respect to the increased empty car movement are utterly without foundation.

Third. Another objection is that there is no penalty fixed on shippers who are not using cars when they order them and do not use them. (See Mr. Lincoln's statement, p. 65.)

The shipper owes no duty to the railroad except the pay of freight until he shall have caused the railroad some damage, and if he orders cars and fails to use them, and thereby the railroad is damaged, the shipper should be liable for the damage, but he should not be liable to the railroad for any more than the damage. Now, what is that

damage? Ought the shipper to have to pay any more than the reasonable value of the use of the car for the time that he has deprived the railroad company of it? Should he be required to pay what profit the railroad might make by using the car for other shipments at that time? In the course of traffic it must be that shippers will occasionally order cars that they do not use, and in the course of handling the traffic it must be that if there is a general demand for such cars at the time they will be used for somebody else who pays as much for the freight and as much profit. At all events, it will be no different under this bill than it is to-day.

In order to meet this point the Commissioners authorized that the third section should prescribe "a schedule of reasonable demurrage charges, which may be different for different railroads and different traffic and localities, deemed reasonable by the Commission, to be paid by shippers for the detention or use of cars either in loading or unloading or by railroads for failing in reasonable time to furnish cars or to make delivery of loaded cars," etc.

If it shall appear to the committee that this provision does not sufficiently protect the railroads against the action of any shipper in ordering cars which he does not use, then I suggest that the same rule which is applied to the railroads for failure to furnish cars—that is, the rule of damages plus reasonable attorney's fees—be applied to the shipper for ordering cars which he does not use, with the same exceptions from liability where, by reason of facts beyond the shipper's control or from accidental or unavoidable cause, he does not use the cars which he ordered, or where it is because of the fault of the railroad.

What ought a shipper to have to pay who detains a car? I undertake to say that he ought to pay a little more than the usual reasonable compensation for the use of the car in order to stimulate the prompt release of equipment and in order to create an incentive not to detain or use equipment which others may need.

If it is profitable for the railroad to furnish a car at \$1 per day (which was conceded) while it is detained beyond the reasonable time customarily allowed, that is as much as the shipper ought to have to pay for; that is a reasonable return on the investment, and a common carrier, according to established principles, has no right to demand more than that for the use of its facilities.

Fourth. With one accord the gentlemen representing the railroads oppose the bill. They do not propose anything in its stead. They announce themselves in favor of letting the railroads prescribe, and then perform as they please the duties which railroads owe to shippers. They want it left entirely to them and they do not suggest any amendment or different provision or change in the bill.

The object of the bill is to have Congress prescribe the duties and liabilities of the carrier so far as it is practicable, leaving all of the details that should be left to the Interstate Commerce Commission to carry out and enforce by rules and regulations applicable to the particular circumstances and conditions of the traffic.

There is running through all of the statements for the railroads the assumption that to supply cars to transport traffic to points on other lines as is required by the first section of this act will leave a given line with insufficient cars to handle its own business, and it is pleased to call its own business that which is originated and which is carried to points only upon its own line.

There are two fatal errors in this contention: First, the present law makes it the duty of the carrier to receive and transport the freight whether it goes to points on its own line or to points on another line, and the obligation is just as binding in the one case as the other, and so it is of freight delivered to it by a connecting line for further transportation; second, it would require the use of at least as many cars to transport the freight over its line and transfer it at the junction point out of its cars to others as it would to exchange the cars at the junction point. The right to demand and the power to compel each line to furnish in reasonable time as many cars as it gets loaded must necessarily leave each road with as many cars as it started out with, provided it wishes to make the demand for the cars, which it may do according to its requirements.

It is assumed that the exchange must be made on the very day that the loaded cars are delivered to the connecting line. That is equally erroneous. The bill requires no such thing, but gives a reasonable time and gives the Commission the power to prescribe the rules respecting it, as above stated.

So these objections all fail, because they are entirely unfounded and the bill requires no such thing as is assumed.

Another thing is that most of the argument advanced by the railroads is based upon the assumption that the bill requires each railroad to itself *own* sufficient equipment to perform the transportation service and that the exchange of cars is the exchange of cars belonging to the lines making the exchange. This assumption is entirely erroneous. The bill makes no such requirement. It does require the railroads to *provide* sufficient facilities and to *provide* sufficient suitable cars in which to load the freight

and transport it. As I have before explained, and it needs no explanation, the existing law and charter duties absolutely require that, but it does not require that the cars be furnished to load to destinations off the line of the originating carrier. The cars to be supplied are of course the cars interchanged and exchanged—everybody's cars being used which are obtainable, just as it is to-day.

Fifth. Having erroneously assumed that the carriers would need more cars operating under this law, it is then contended that carriers could not comply because, it is claimed, the shortage in cars is due to the inability of railroads to secure cars from the manufacturing plants of the country. I have exploded that idea heretofore by referring this committee to the tables in the hearing before the Senate committee and the fact that a very great number of cars and locomotives have been manufactured and exported from this country into others during the very time that the roads professed that they could not get additional equipment.

But these statements which I have secured from the Interstate Commerce Commission, and which were filed before the Senate committee, and which have been heretofore referred to by me, demonstrate it that in the aggregate each system of railroad in the West and all of the roads of the West as a whole are supplied with a very much greater equipment in proportion to the traffic than they had in 1900, so that unless we assume that the equipment was insufficient then, it can not be said that more cars are needed now. While terminal facilities and sidetracks may be insufficient, that is not due to any inability of railroads to secure cars from the factories.

Sixth. I observe from the questions asked by some of the members of the committee and by statements made by some of the representatives of the railroad that it is supposed that this bill requires each railroad to deliver to its connection as many cars belonging to the railroad of whom demanded as it receives loaded, whether the road which delivers the loaded cars wants cars in exchange or not. This idea is entirely erroneous. The bill only makes it the duty of the railroad company to supply cars in exchange *when demand is made*. If no demand is made there is no duty to deliver and no obligation on the part of the road which delivers the loaded cars to its connection to receive any cars in exchange, except loaded cars delivered for further transportation. It will happen in ordinary times that the car account of that sort of cars which move loaded in both directions will show that most of the cars that are furnished in exchange are cars which are loaded, just as it is to-day. No change in business methods will happen, except where there are at present restrictions to the free use of cars.

It will be principally special sorts of cars that are demanded in exchange, like coal cars, stock cars, refrigerator, oil-tank cars, and the like. During the heavy grain movement naturally demands will be made for sufficient suitable cars in exchange for the loads.

At most important junctions when freight is exchanged between different systems of railroad, each road continually has a large amount of equipment released from day to day. There are generally several lines leading both ways and a railroad bringing in grain, for example, to Missouri River or Mississippi River eastbound would have its choice of connection to which it might deliver the loaded cars, and each of those connections desiring to secure for transportation the loaded cars would provide itself so far as possible with equipment to exchange, and in the make-up of the business from day to day a large amount of cars loaded with merchandise and other westbound traffic for destinations on the road to which delivery would count as a large amount of the exchange equipment.

Now, it has been assumed that if a railroad company could not get the equipment and did not have it, it would be penalized for not obeying the law. That assumption is based upon an improper understanding of the bill, because the penalties of the act do not apply in cases where the failure to comply results from cases which could not have been provided against by the use of reasonable foresight and diligence. I assume that no Congressman or any other man who stands in the position of lawmaker would suppose that a railroad company ought to be exempt from the obligation to furnish equipment for freight which it could reasonably contemplate being delivered to it at junction points or otherwise; at least, that it should be required to use strict diligence to do so. It will be found all the way through this bill that the standard of reasonableness is the measure of duty, and it will be found all through the argument of the opposition that they wish the standard to be prescribed by the railroad, whereas we want it prescribed by Congress and by the Commission.

Furthermore, before these gentlemen were here, I presented a proposed provision found on page 51 of the last report, providing that it should be sufficient in compliance with the act to return the same cars, if demanded, where the railroad was unable by the use of reasonable diligence to furnish other cars.

Seventh. It has been assumed in the argument for the railroads that this bill would deprive a railroad of its cars by sending them off its line without any provision for its return. That is entirely erroneous. The second section of the bill requires that every railroad company receiving the cars of another shall upon demand of the owner return them in reasonable time, and it authorizes the Commission to prescribe a regulation with respect to it. And in the fourth section each railroad company that violates any provision of the act or rules prescribed by the Commission is made liable to the shipper or to other person injured or to any railroad company damaged thereby for all such injuries and damages as may result to the property or business of the injured party and to an amount equal to a reasonable attorney's fees.

The law makes each railroad company liable to the owner of any car for its use and to any injury thereto and the amount to be prescribed by the Commission in the absence of an agreement on the part of the railroads.

The bill thus gives ample power to the owner of any car to command its return. I assume that the Commission and the railroads would confer together in prescribing the rules and regulations as well as the charges concerning the return of cars to the owner—a subject now entirely unprovided for by law. The fact is, if the law is enacted the railroads will then agree upon car exchange and demands under the second section will not be made.

One of the constant complaints given as a reason for not enacting this law is that railroads would lose the use and control of their equipment. One of the constant reasons assigned for not now exchanging cars (where that happens) is the fact that the railroad company could not compel their return. These points are entirely met by the provisions of the bill.

Eighth. It is contended by several gentlemen representing the railroads that since traffic has fallen off the railroads are performing a satisfactory service and that the law is not needed. In answer to this it is sufficient to say that if they ought to perform such service the law should define as near as may be their duties in this particular and leave it to the Commission where that is deemed best. Besides, it is perfectly clear that if the carriers are left to themselves there will never be a time that shippers in some localities of some commodities are not seriously injured by failure of carriers to give a reasonable service, and it will happen that the very same carriers which prevent exchange of cars during the maximum traffic will do it again; and that the congestion which results from the refusal of carriers to permit cars to go off the line will be duplicated.

RECEIVERS AND SHIPPERS' ASSOCIATION COMPANY,

Cincinnati, Ohio, February 27, 1908.

MY DEAR MR. KENNEDY: I understand that there will be a hearing before the House Committee on Interstate Commerce on the Culberson-Smith car and transportation service bill on March 3. We are in favor of this bill, and hope that your committee will recommend it for passage. When it gets out of the House we will take the matter up with the various Representatives from the different parts of the State of Ohio.

I have looked over this bill very carefully, and it seems to me to be a very conservative measure. It covers a very important feature of transportation that is now only inadequately provided for. This bill makes the duty of the carrier clear. We desire to urge you to vote for it in your committee.

Thanking you in advance for your support, I remain,

Yours, sincerely,

E. E. WILLIAMSON,
Commissioner.

HON. JAMES KENNEDY, *Washington, D. C.*

BUCYRUS, OHIO, *March 30, 1908.*

S. H. COWAN.

Attorney at Law, Fort Worth, Tex.

DEAR SIR: We have your favor March 21, 1908, with inclosure as stated. Replying would say that we have written our Senator, urging prompt reporting out and enactment of the Smith-Culberson car and transportation bill. We are heartily in favor of its passage, believing it would be to our interest as heavy shippers to do so.

Thanking you kindly for calling our attention to the matter, we are,

Yours, respectfully,

S. M. HALL,
Secretary Ohio State Stone Club.

THE COMMERCIAL CLUB OF TOPEKA,
Topeka, Kans., January 14, 1908.

H. E. CROWLEY,
Secretary Cattle Raisers' Association, Fort Worth, Tex.

DEAR SIR: Answering yours of the 2d instant, the matters suggested by your association have been carefully considered by our commercial club and our Members of Congress have been communicated with and know our wishes in the matter. I think if the Senators from Texas will talk with Senator Curtis they will be able to secure his cooperation, and would suggest that your delegation in the House talk with Congressman D. R. Anthony.

Very truly, yours,

T. J. ANDERSON, *Secretary.*

SOUTH OMAHA LIVE STOCK EXCHANGE,
South Omaha, Nebr., March 31, 1908.

Mr. S. H. COWAN,
Fort Worth, Tex.

DEAR SIR: I find upon my desk on my return from Washington your letter of March 21 in regard to the Smith-Culberson bill.

You have undoubtedly learned ere this that the South Omaha Live Stock Exchange, as well as the National Exchange, was represented at Washington last week before the committee which has this bill in hand. Our national, as well as local, president presented the stockmen's side of this matter, we think, in a very able manner to the committee. After making his talk Mr. McPherson was congratulated by the committee as having presented in a most clear manner the position of the national as well as local exchanges in reference to this bill.

We interviewed the Nebraska delegation personally and have assurances from them that this bill will be given careful consideration. Hoping that the position of the South Omaha Exchange may be acceptable to you and those you represent in Texas. we are

Yours, very truly,

A. F. STRYKER, *Secretary.*

MARCH 10, 1908.

Hon. W. P. HEPBURN,
Washington, D. C.

DEAR SIR: It has been brought to our attention that you are on one of the committees in the House who have in charge the Culberson-Smith bill, S. 3644, covering prompt furnishing of transportation facilities.

We believe that a bill of this character is very much needed at the present time and to the interest of the shipping public, and that something of this character ought to be passed without delay to insure more prompt handling of equipment and better service on the part of the common carriers. We would therefore respectfully ask that you give the proposition your early consideration.

Yours, truly,

THE INDIANAPOLIS BOARD OF TRADE,
Indianapolis, Ind., January 6, 1908.

H. E. CROWLEY,
Secretary Cattle Raisers' Association of Texas, Fort Worth, Tex.

DEAR SIR: Your circular letter under date of January 2 instant has been received. the same in regard to efforts you are making to secure better railroad service, etc.

In reply will state that we have been laboring on these lines recently and have made efforts to secure better car service, and the matter is now in the hands of the Indiana State railway commission, with fair prospects of success.

Yours, very respectfully,

JACOB W. SMITH, *Secretary.*

BIRMINGHAM, ALA., January 6, 1908.

Mr. H. E. CROWLEY,
Secretary Cattle Raisers' Association, Fort Worth, Tex.

DEAR SIR: We beg to acknowledge receipt of yours of the 2d, and beg to say that this association has done and will continue to do all in its power to promote this very interest.

Yours, truly,

SOUTHERN WHOLESALE GROCERS' ASSOCIATION.

NEBRASKA STATE RAILWAY COMMISSION,
Lincoln, Nebr., February 28, 1908.

Mr. T. W. TOMLINSON,
Secretary American National Live Stock Association, Denver, Colo.

DEAR SIR: Replying to your favor of the 5th instant, I am directed by the commission to advise you that they approve of the bill, a copy of which you inclosed, to require railroad companies engaged in interstate commerce to promptly furnish cars and other transportation facilities, and to empower the Interstate Commerce Commission to make rules and regulations in respect thereto, etc., and at their further direction I have written each of the Senators and Representatives from Nebraska to that effect.

Very truly, yours,

CLARK PERKINS, *Secretary.*

ST. PAUL BOARD OF TRADE,
St. Paul, Minn., March 11, 1908.

Mr. S. H. COWAN,
Care of New Willard, Washington, D. C.

MY DEAR COWAN: It affords me the greatest pleasure to inform you that our board of directors have directed me to indorse on behalf of this board the Smith-Culberson bill for which you stand sponsor.

In accordance with their instructions I have this date written Congressman Stevens and Senator Clapp requesting that they render the bill and you all the support they can, and I only hope the letters may be fruitful of results.

Am sorry I can not be with you to aid and assist you with our people, but it is impossible at this writing, but may take a run down before adjournment.

With best wishes for your success in this matter, beg to remain,

Yours, very truly,

W. H. PATTON, *Secretary.*

WESTERN SOUTH DAKOTA STOCK GROWERS' ASSOCIATION,
Buffalo Gap, S. Dak., February 3, 1908.

Hon. S. H. COWAN,
Washington, D. C.

MY DEAR SIR: I am just in receipt of your circular letter of January 30, together with copy of the Culberson-Smith car and transportation bill.

Have just finished writing personal letters to our Senators and Congressmen, which I trust will have the desired effect; if not will have to pull a few wires and play a little politics. The fur is beginning to fly among the Senatorial and Congressional candidates in this State, and I think our prayers will be heard and answered.

Sam, should you happen to pause on your way to the basement café of the Willard, take a high-ball for or on me.

Very truly, yours,

F. M. STEWART, *Secretary.*

EAST BUFFALO LIVE STOCK ASSOCIATION,
East Buffalo, N. Y., March 7, 1908.

Hon. WILLIAM H. RYAN,
House of Representatives, Washington, D. C.

DEAR SIR: I inclose to you resolution adopted by this association at the regular meeting March 5, 1908, with the request that you present it for the consideration of the Committee on Interstate and Foreign Commerce, and also, if possible, that it be brought to the attention of the Senate Committee on Interstate Commerce, which has this bill under consideration.

I am sending copy of this to Mr. S. H. Cowan, New Willard Hotel, Washington, who represents the American National Live Stock Association and the Cattle Raisers' Association of Texas.

Very truly, yours,

C. F. WATKINS, *Secretary.*

Resolution unanimously adopted by the East Buffalo Live Stock Association March 5, 1908.

Resolved, That the East Buffalo Live Stock Association hereby indorses the Culberson-Smith car and transportation service bill (S. 3644, H. R. 13841), to require railroad companies engaged in interstate commerce to promptly furnish cars and other

transportation facilities, and to empower the Interstate Commerce Commission to make rules and regulations with respect thereto, and to further regulate commerce among the several States, and respectfully requests that the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce favorably report said bill.

Attest:
[SEAL.]

EAST BUFFALO LIVE STOCK ASSOCIATION.

C. F. WATKINS, *Secretary*.

CARLSBAD, N. MEX., *January 30, 1908.*

Mr. IKE T. PRYOR,

President Cattle Raisers' Association of Texas, Fort Worth, Tex.

DEAR SIR: Replying to your favor of the 25th instant, beg to state that Capt. S. T. Bitting, of the firm of Smith & Bitting, Messrs. Sam and Frank Jones, and Bujac & Powers are in my office and request me to write you as follows:

Mr. C. N. Jones ordered from the agent of the Pecos Valley Northeastern Railway, at Carlsbad, N. Mex., about October 14, 1907, 18 cars, to be delivered October 20, 1907, for the shipment of 540 head of cattle that had been gathered between October 1 and October 15, 1907. These cattle were held in pasture at an expense of \$110. The cars ordered never came, and consequently on October 28, 1907, the cattle were turned loose.

The above-named gentlemen, whose names appear below in the affidavit, state that in addition to the actual expense of \$110 above mentioned they were damaged in the further sum of \$220, costs of gathering said cattle, and a good many died from alkali while being held for shipment, and furthermore the shrinkage in the price of cattle and the fact that the proposed shippers have been deprived of the use of this money amounts to, at least, \$1 a head, or \$540. Thus the said parties are damaged in the sum of \$870.

The above comprises a very small minority of the cattlemen of this section that have suffered by reason of the said The Pecos Valley Northeastern Railway's failing to furnish cars when ordered as per contract.

Yours, truly,

E. P. BUJAC.

TERRITORY OF NEW MEXICO, *County of Eddy:*

On this the 30th day of January, 1908, before me personally appeared C. N. Jones, S. T. Bitting, Sam Jones, Frank Jones, and W. H. Powers, who, first being by me duly sworn according to law, deposed and on oath say that the statements above set forth are true.

C. N. JONES.

S. T. BITTING, *of Smith & Bitting.*

SAM JONES.

FRANK JONES.

W. H. POWERS.

Sworn to and subscribed to before me this 30th day of January, 1908.

[SEAL.]

E. P. BUJAC,

Notary Public, Eddy County, N. Mex.

THE FOWLER RANCH,
Maple Hill, Kans., January 31, 1908.

IKE T. PRYOR, Esq., *Fort Worth, Tex.*

DEAR MR. PRYOR: We have yours of 25th regarding "transportation and car service bill."

We were put to a very great loss and inconvenience during the past year. Our cattle here at the beginning of October were all ready to go as prime exporters. We began shipping on the 7th of October and found it impossible to ship out as we had intended on account of not being able to get cars when we called for them. The result was that, instead of these cattle being all disposed of during the month of October, we did not get rid of them till the middle of November. By that time the financial panic had struck us and the price had gone off \$1 a hundred pounds, showing a loss to us of \$15 a steer, as these cattle weighed on an average 1,500 pounds. We consider on that deal we lost \$5,000.

On the 15th of October we had ordered cars to ship up from Channing, Tex., to here. We had our cattle gathered near Channing ready to ship by the 20th. We held these

cattle for over two weeks, but could get no assurance from any of the roads that they would take them out. About that time a storm struck us and we simply had to turn them loose. We finally got cars down there on the 10th of November. These cattle, of course, had to be gathered again and they were at least 100 pounds lighter than they were in the middle of October. In addition to this they had drifted so badly on account of being turned loose in the storm that we could not gather within 150 head of what we turned loose. These cattle, had they been placed on the market, would have brought \$5 a head less than they would have sold for in the middle of October.

These are only two instances of the losses we have sustained on account of the car shortage. If something can't be done to enable us to handle our business in a more satisfactory way, we will be forced to get down and out. We trust some radical change will take place.

Yours, truly,

FOWLER & SON.

THE KANSAS CITY LIVE STOCK COMMISSION COMPANY,
Kansas City, Mo., January 29, 1908.

IKE T. PRYOR, *President, Fort Worth, Tex.*

DEAR SIR: We shipped in May, 1907, 2,000 cows from Riverton, on the Pecos Valley Railroad, a branch of the Santa Fe, to Panhandle, Tex. The cars were ordered for this shipment for about April 15, and the cattle were ready for shipment at that date. It was very dry in that locality, grass was short, and in consequence of having to hold these cows under herd from date of proposed shipment to the time we did ship, May 5 to 12, the cows became so weak and impoverished from being held under herd that, in addition to having to cut out 100 head or more of the weak ones, 200 head died in transit, causing a loss to the shippers of at least \$3,000.

Yours, truly,

JOHNSON BROS., *of Pecos, Tex.*

THE NATIONAL BANK OF CARLSBAD,
Carlsbad, N. Mex., January 27, 1908.

Mr. IKE T. PRYOR,

President Texas Cattle Association, Fort Worth, Tex.

DEAR SIR: I have your letter of January 25 relative to the bill now before Congress known as the "Transportation and car service bill," and I wish to say that I am glad to furnish the data asked for and also assure you of the urgent need for such a bill and my willingness to be of any service I can. I will also write Congressman Andrews to-day. Will say that while my fall shipments would have been comparatively small, I know of many cattlemen who were treated exactly as I was, making the total of cars in my neighborhood at least fifty, and none were delivered. On September 2 I ordered four cars for October 14; on September 19 I ordered five cars for October 14. On November 5 I canceled the order for the nine cars, and the agent of the Santa Fe road here told me at that time "there were 1,500 cars ordered ahead and it might be sixty days before they could furnish my cars." I had no pasture, the cattle were losing every day, so I turned them loose after holding them three weeks.

As vice-president of this bank I can say that the failure of the Santa Fe Railroad to furnish any cars caused the cattlemen and the entire business community serious and uncalled for inconvenience and loss. I heartily urge the passage of this bill.

I am, yours, truly,

MORGAN LIVINGSTON.

Sworn to and subscribed before me this 27th day of January, 1908.

[SEAL.]

R. B. ARMSTRONG,
Notary Public.

THE KANSAS CITY LIVE STOCK COMMISSION COMPANY,
Kansas City, Mo., January 29, 1908.

IKE T. PRYOR, *President, Fort Worth, Tex.*

DEAR SIR: Answering your letter of the 23d in regard to shipments of cattle during 1907, beg to say that our first delay for cars occurred on April 10 to 15, on which dates we had in orders to ship 25 cars each from Bovina, Tex., to Hymer, Kans. We were not able to get any cars for this shipment before the 27th of April and were not able to finish our shipment till May 11. But as the spring of 1907 was a backward

one and grass slow in starting in Kansas pastures we suffered no actual loss or damage in consequence of this wait; but during the months of September and October while attempting to ship these cattle from Kansas pastures to market, we had at different times long delays—one wait of three weeks from the 20th of September to the 16th of October. We were located on the Santa Fe Railroad, and on the 16th of October in order to get a shipment out, we drove 15 miles to the Missouri Pacific Railroad at an increased expense and a heavy shrink on the cattle. After this we had frequent delays, and during this time we were endeavoring to ship, but could not get cars, the market was considerably better than when we did ship, and before we were able to ship out the number of cattle we desired to ship frost killed the grass and cattle begun to shrink. I estimate that in shrinkage of weights and decline in markets that we sustained a loss of from \$3,000 to \$5,000. The number of cattle shipped in this transaction was 5,400 head.

Yours, truly,

W. D. & F. W. JOHNSON, of Bovina, Tex.

HARGRAVE, TEX., February 1, 1908.

Mr. IKE T. PRYOR,

President Cattle Raisers' Association, Fort Worth, Tex.

DEAR SIR: In reply to yours January 25, 1908, will say that my business with the railroad has been very unsatisfactory for the last three or four years.

Last April, about the 25th, I ordered about 30 cars from Pecos Valley Railroad Company to be loaded at a shipping point called Riverton, Tex.; destination, Canadian, Tex. Those cars were promised for May 10.

I had the cattle ready for shipment May 10, and held those cattle under herd, waiting for the cars, which were continually promised me from day to day, and finally got the cars June 9. By that time the cattle had shrunk in flesh and quite a lot died of poverty, so there was only 14 loads left that was able to be shipped out.

The distance from Riverton to Canadian is about 340 miles. A part of this shipment reached Canadian on the 12th and the remainder on the 14th. So you can readily see I got a very poor run.

And on the 1st of August I ordered 10 cars from Canadian to Kansas City, to be loaded out on the 7th of October. The agent told me he would furnish the cars if he could; he didn't give me any definite promise, and on October 7 I had those cattle at Canadian ready to be shipped out.

The agent told me that day to pen those cattle; that he would begin loading those cattle at 7 p. m. that evening. Those cattle stood in the pens that night and the forenoon of the 8th, and then they were loaded out, and three cars left at 2.30 and the other seven cars left at 5 o'clock p. m., October 8, and they reached Kansas City at 5 o'clock October 10, and went through without feed or water on the way.

And it was three days from time they were put in shipping pen until they reached Kansas City. I think those cattle were damaged from \$2 to \$3 per head from the long run and starvation. It is to be hoped we can get some relief, else we will have to quit the cattle business.

I could mention other shipments which have been just as unsatisfactory as those. I put in an order at Riverson, Tex., last November for 40 cars for the 10th and 20th of the coming April.

The distance to be shipped from Canadian to Kansas City is 482 miles. This run should have been made in twenty-four to twenty-six hours, instead of three days. Now, if you can give us any relief it will be appreciated by the cattlemen of the Panhandle and west Texas.

Yours, respectfully,

A. H. TANDY.

COLORADO, TEX., January 31, 1908.

Col. IKE T. PRYOR,

President Cattle Raisers' Association, Fort Worth, Tex.

DEAR SIR: Answering yours of 25th instant, I beg to advise that on the 28th day of February, 1907, I made application for 50 stock cars for shipment from Plainview, Tex., to Latham, Kans. The freight agent of the Santa Fe at Amarillo booked the order, but did not acknowledge receipt of same. The cars were ordered for shipment on the 20th of April. My cattle were driven to Plainview and arrived there in due time, but we were compelled to wait and hold them on very short grass at a considerable expense and some loss among the cattle by reason of cows dropping calves, and finally loaded them out on May 11. On April 8, 1907, I made application with the

station agent at Plainview, Tex., for 20 stock cars for shipment to Kansas City, to be used on October 20, 1907, and although my cattle were driven to Plainview, Tex. and reached there in due time, they were held ten days in bad, stormy weather before the company would furnish cars to load them out. These are two instances out of very many which I have experienced during the last three or four years.

Very truly, yours,

A. B. ROBERTSON.

FORT WORTH STOCK YARDS,

February 1, 1908.

Col. I. T. PRYOR, *San Antonio, Tex.*

DEAR SIR: I am writing Senator Owen, of Oklahoma, and asking him to take an interest in the proposed Culberson and Smith bill and am also telling him that you will call on him, and you will find Senator Owen to be one of the nicest men you have ever met. I have known him for fifteen or twenty years, and I feel there is not a more competent man than Mr. Owen in the Senate. I am also mailing you a copy of my letter to him. I am not a very good letter writer, and for this reason it may not be just what he ought to have, but it is about the best I can give him and hope it will meet with your approval.

Wishing you much success, I remain,

Yours, very truly,

J. S. TODD.

FORT WORTH STOCK YARDS, *February 1, 1908.*

Senator R. L. OWEN, *Washington, D. C.*

DEAR SIR: Senator Culberson and Congressman Smith will have up during this month before Congress a bill known as the "Culberson-Smith car and transportation service bill," and will try to get the stockmen some relief in the way of service and transportation for their live stock, which has been very bad for the last few years and has caused a great loss to the cattlemen. As this bill will be of great service to the Texas and Oklahoma cattlemen, I take the liberty to write and ask you if you won't look this bill over and take a personal interest in it, for I know you are familiar with the conditions of the live-stock interest in Oklahoma, as you at one time were largely interested yourself, and I feel you can give us good assistance by helping out in this matter.

About the year 1898 our freight from San Angelo to Muskogee and Checotah was \$52.50 per car from Texas points to Oklahoma; now they are \$60.40 from the same place, with a feed bill added of \$2.50 per car, and are from twelve to eighteen hours longer on the road, which you know is a great damage to thin cattle going to the pastures and causes big loss from death. The rates from Checotah and Muskogee points have been increased from 5 to 6 cents per hundred, making a difference of \$10 to \$11 per car in the last seven or eight years. Our last advance was in the year 1903, of \$6.60. At that time they did not think of taking over twenty-eight or thirty hours to St. Louis. Last year I shipped something like 4,000 cattle from Council Hill and some of them unloaded at Parsons, Kans., and none of them passed Sedalia without being unloaded and fed at the expense of \$3 per car. It was nothing for these cattle to stand from three to four hours on sidetracks, and you know the loss and damage that occur from delays of this kind hurt us more than the advance in freight.

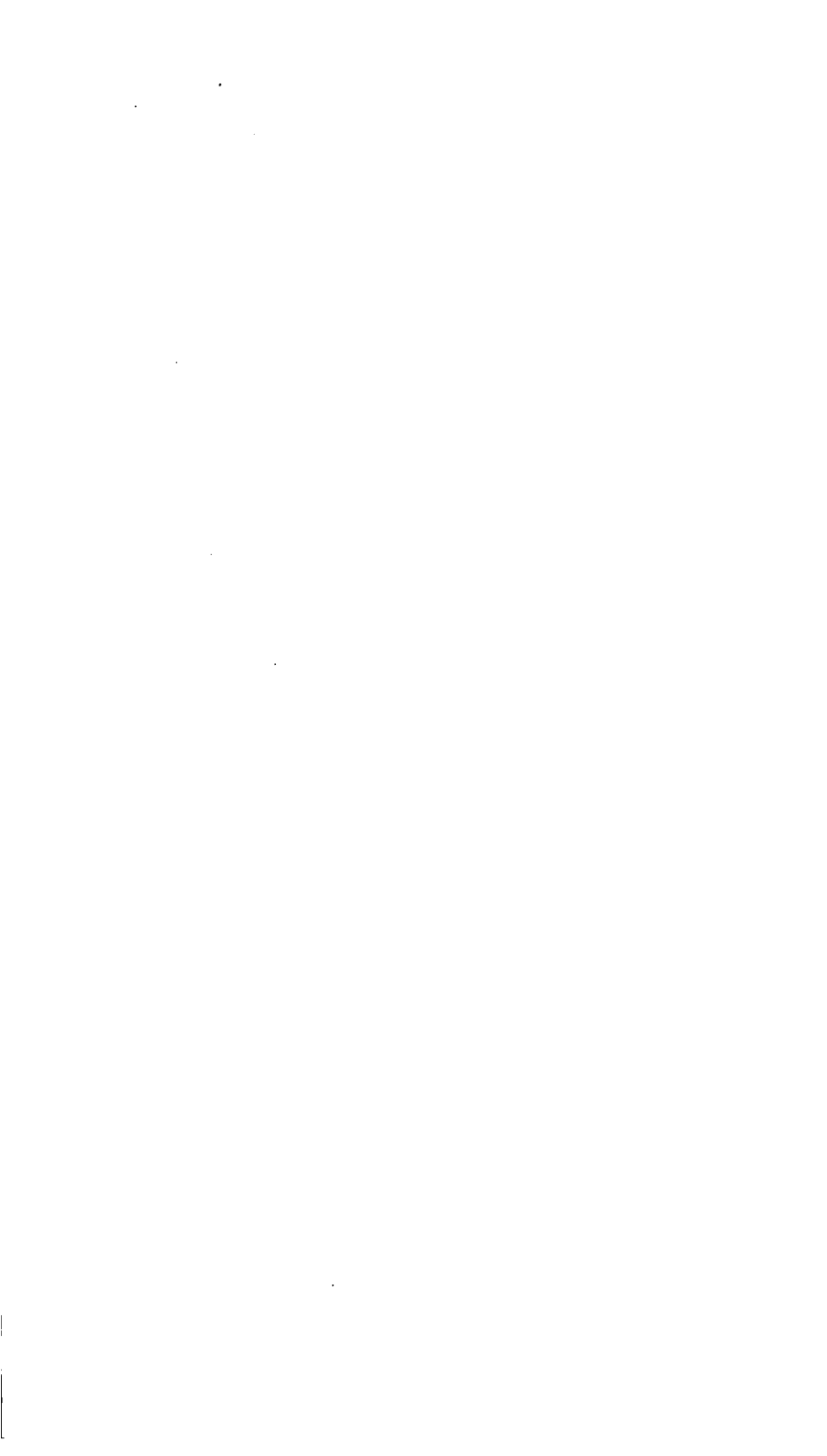
Col. I. T. Pryor, president of the Cattle Raisers' Association, will be in Washington during this month looking after this bill, and I consider him one of the best posted cattlemen in the State of Texas, and is a very fine gentleman. I am going to write him and ask him to call on you and after you meet him I hope you will give your support to this bill.

Thanking you for past favors, I remain,

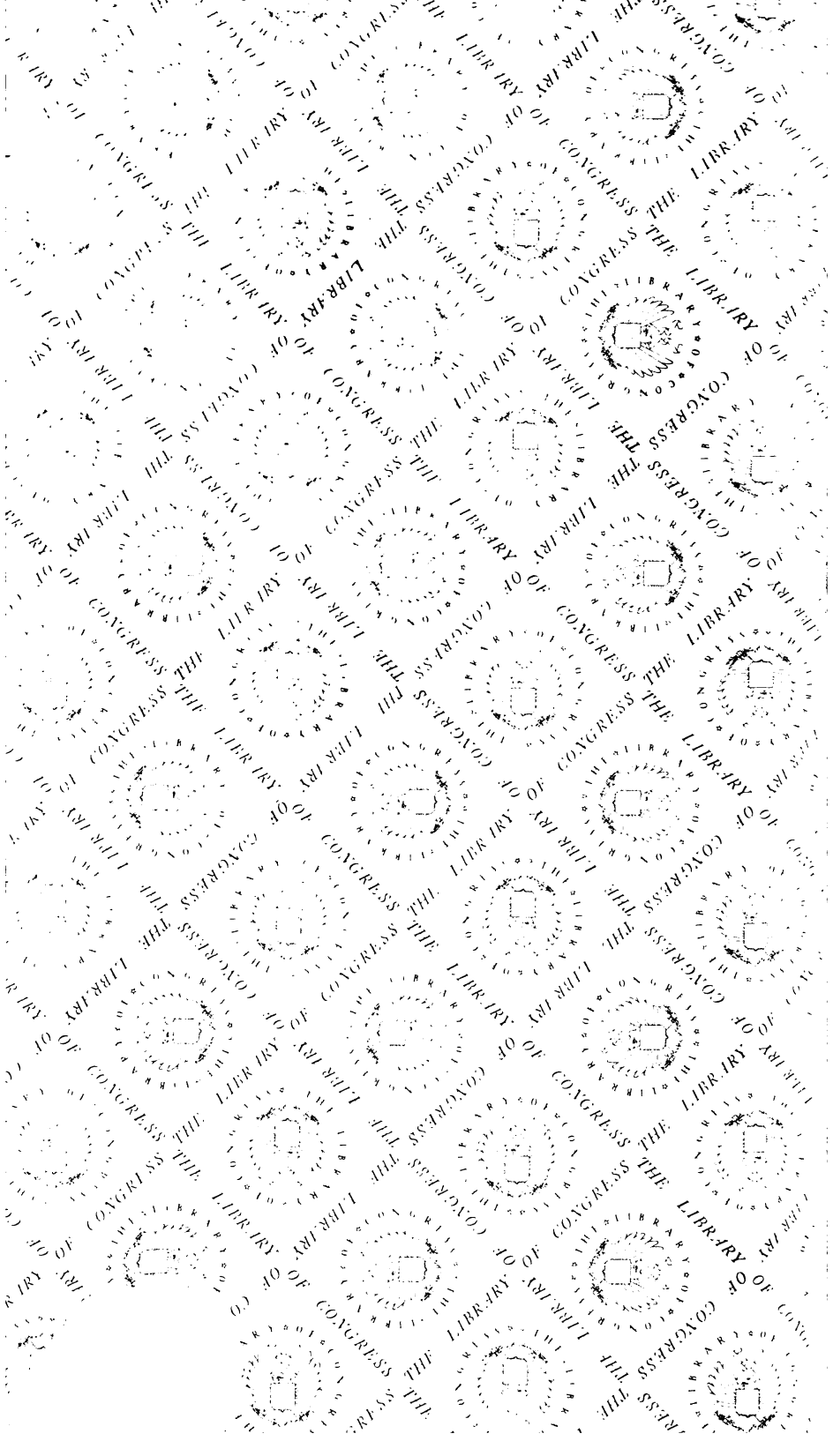
Yours, very truly,

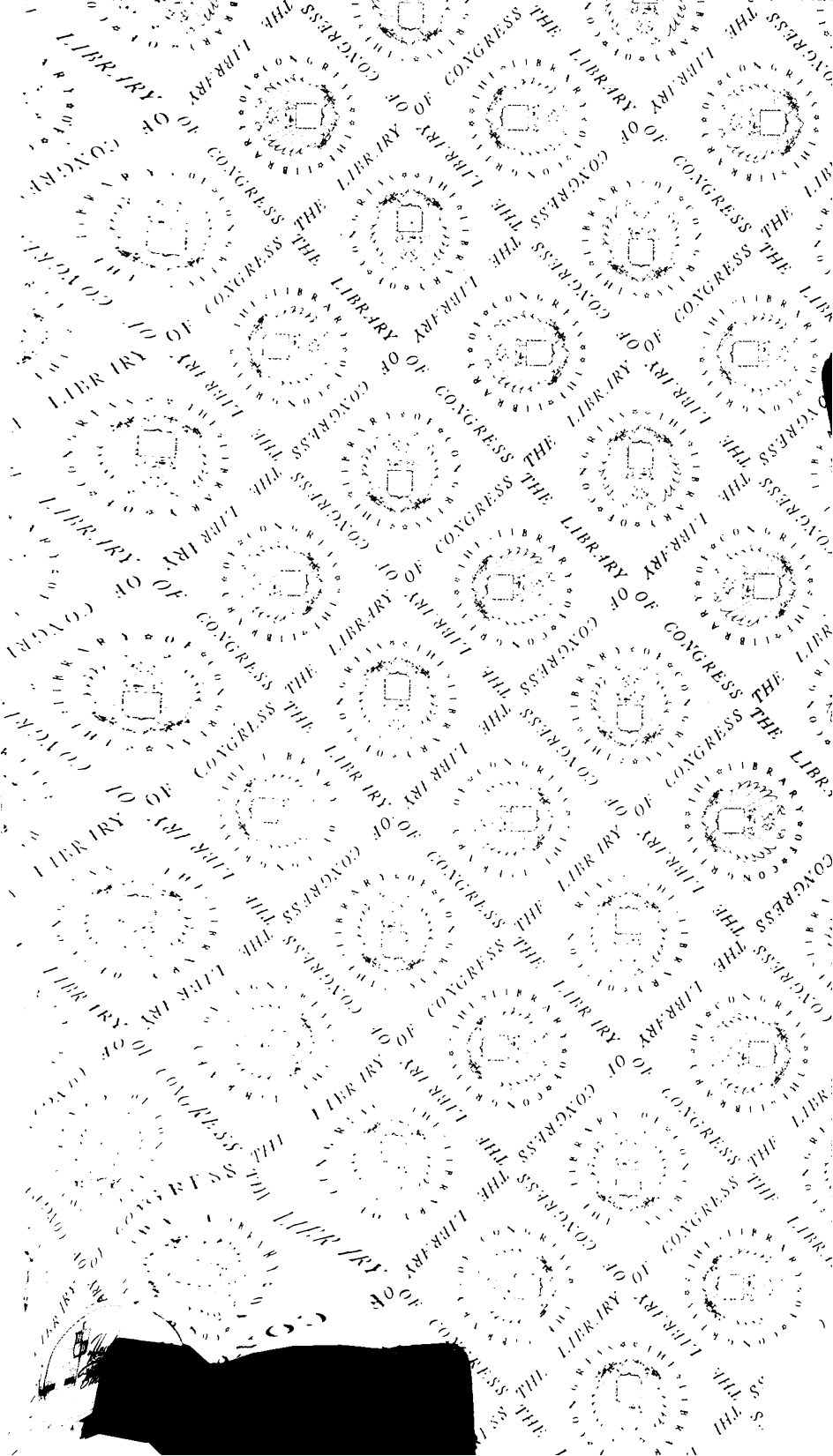
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